Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANWAR ALKHATIB, Plaintiff,

-against-

NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).

Case No. 13-CV-02337 (ARR)(SMG)

ACTION #1

-------------------------------------x

SHAHADAT TUHIN, Plaintiff,

-against-

NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).

Case No. 13-CV-5643 (ARR)(SMG)

ACTION #2

-------------------------------------x

BORIS FREIRE and MIRIAM OSORIO, Plaintiffs,

-against-

NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).

Case No. 13-CV-7291 (ARR)(SMG)

ACTION #3

-------------------------------------x

SIMON GABRYS, Plaintiff,

-against-

NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).

Case No. 13-CV-7290 (ARR)(SMG)

ACTION #4

-------------------------------------x

DATE: April 28, 2015

CONTINUED VIDEOTAPED EBT OF MAMDOH ELTOUBY

-------------------------------------x
ZHENGHUI DONG, Case No.
Plaintiff, 14-CV-2980
(ARR)(SMG)
-against-
ACTION #5
NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).
-------------------------------------x
NASRIN CHOWDHURY, Case No.
Plaintiff, 14-CV-2981
(ARR)(SMG)
-against-
ACTION #6
NEW YORK MOTOR GROUP LLC, et al.,

Defendant(s).
-------------------------------------x

CONTINUED VIDEOTAPED DEPOSITION of the Defendants NEW YORK MOTOR GROUP LLC and MAMDOH ELTOUBY, by MAMDOH ELTOUBY, pursuant to Order and Notice, held at the law offices of MFY LEGAL SERVICES, INC., 299 Broadway, 4th floor, New York, New York, on April 28, 2015, commencing at 10:05 A.M., before MEDEA EDER, a shorthand reporter and Notary Public within and for the State of New York.

REINIG REPORTING, INC.
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(Continued...)

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-continued-

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oOo

M A M D O H E L T O U B Y , having been again duly sworn by a Notary Public within and for the State of New York, stated his address as 178 Threepence Drive, Melville, New York 11747, continued to be examined and testified under oath as follows:

oOo

CONTINUED EXAMINATION BY MR. LANE:

Q. Good morning, Mr. Eltouby.
A. Good morning.
Q. Thanks for coming back. I know we went through this yesterday, but I just want to remind you again that in this deposition the court reporter is going to be taking down every word that I ask and that you answer. I'm going to go through a series of questions about the cases that I represent clients on -- and that is Alkhatib, Freire, Dong, Chowdhury and Gabrys -- versus the New York Motor Group, Planet Motor Cars, yourself, your daughter, and Julio Estrada, as well as the banks involved in these cases.
Please answer every question

clearly with a yes or a no. Don't shake your head, because the court reporter can't take down motions.

You testified yesterday, I know. But I don't remember if I asked you if, before yesterday, you had ever testified at a deposition before?

A. What do you mean?

Q. Have you ever sat at a deposition like this before --

A. Yes, I did.

Q. -- now?

Before yesterday, had you ever done that?

A. Yes, when my daughter, Nada --

MR. SIMON: No, no, not attend a deposition, but testified at a deposition.

A. Oh, testify? I think maybe a long time ago.

Q. Do you know what kind of case that was?

A. Yes. A customer was have defect in a car.

Mamdoh Eltouby

Q. And they had sued the dealership?

A. They sued Planet Auto Group.

Q. When was that?

A. That was seven years ago.

Q. So you understand that you are under oath when you're testifying?

A. Yes.

Q. Do you know what that means?

A. Yes.

Q. Do you understand that the failure to answer truthfully could result in court sanctions, there could be punishments for not answering honestly, and also testifying falsely could be perjury, which could be a criminal case. Do you understand?

A. Yes.

Q. Are you on any drugs or medication today that would affect --

A. No.

Q. -- your ability to answer questions?

A. No.

MR. LANE: Again, just let me finish every question before you answer.

THE WITNESS: Okay.

Q. So you're not on any drugs or medication that would affect your ability to understand and answer questions?

A. No.

Q. I would like to pick up in an area we were talking about yesterday, which was that we were trying to understand the relationship between Hillside Motors LLC and Planet Motor Cars. Can you just explain what that relationship is?

MR. SIMON: Note my objection to the form of the question. You said "We" -- you said "we" were trying. Who is "we"? Are you including him?

MR. LANE: You're kidding, right? Are you going to object to every little thing?

MR. SIMON: You said "we were trying to understand the relationship."

MR. LANE: Right, "we."

MR. SIMON: You mean, you are?

MR. LANE: I'm using the royal we, yes.

MR. SIMON: Okay, go on.

Q. Could you tell me what the relationship is between Hillside Motors and Planet Motor Cars?

A. No relationship.

Q. There's no relationship at all?

A. No relationship.

Q. When Planet Motor Cars closed, did the cars from Planet Motor Cars go to Hillside Motors for sale?

A. No.

Q. Some of the employees from Planet Motor Cars went to Hillside Motors to work at Hillside; correct?

A. Could be.

Q. I think yesterday you had said that Shawn, the finance manager, went from Planet to Hillside when Planet closed and Hillside opened?

A. Correct.

Q. Were there any other employees who worked at Planet that also moved to Hillside when Hillside opened?

A. No.

Mamdoh Eltouby

MR. LANE: I would like to have this marked. I don't know where we left off yesterday.

MR. SIMON: Five exhibits.

MR. LANE: Five? Okay, so let's start this as Plaintiff's 6.

(Document entitled "Vehicle Service Contract," referencing Gaganmeet Singh Bains, is marked as Plaintiff's Exhibit 6 for identification, as of this date.)

Q. I'm going to put Plaintiff's Exhibit 6 in front of you. Can you just take a look at all of the documents there. It's three documents, four pages.

MR. LANE: I'm sorry, are you talking to your client about an exhibit in front of him during the deposition?

MR. SIMON: Well, I mentioned that this is Exhibit 6.

MR. LANE: I think it's improper for you to do anything except allow your client to read the exhibit.

MR. SIMON: I'm looking at it,

too.

MR. LANE: That's fine, you can look at it, but I would really appreciate it if you would not describe the document to your client, which I would like the record to show you clearly were.

MR. SIMON: Yes, I was. Clearly, I was. I'm going to look at it alone, so I won't confer with him. These are multiple documents. Look at all of them. He's going to ask you questions about them.

Q. So do you recognize these documents?

A. Yes.

Q. The front page is a vehicle service contract?

A. Vehicle service contract, yes.

Q. And the second page is a Total Loss Protection passenger-vehicles registration form; is that correct?

A. Yes.

MR. SIMON: Keep your voice up so

she can hear you.
A. Yes.
Q. And the third and fourth pages are --
A. Service contract.
Q. -- the retail installment contract?
A. Mm-hmm. Yes.
Q. Let's start with the last page, the retail installment sales contract. Do you see who the buyer's name is there?
A. Yes.
Q. Gaganmeet Singh Bains?
A. Yes.
Q. Do you recognize that name on the third page there?
A. This is here.
Q. Do you recognize the name?
A. I don't know him personally.
Q. But do you recognize that name, Gaganmeet Bains?
A. I do not recognize every customer.
Q. I'm just wondering if you recognize that name.

A. No.

Q. It's not a trick question. Do you recognize the name?

A. No.

Q. No? Okay. Who is listed as the seller on the retail installment contract?

A. Hillside Motors.

Q. At 161-10 Hillside Avenue?

A. Correct.

Q. And what is the date of this contract? It's on the bottom of the second page of it.

A. 10/26/13.

Q. October 26, 2013?

A. Yes.

Q. And also someone from Hillside Motors is signing as the representative?

A. Correct.

Q. Do you recognize that signature?

A. Not really.

Q. You don't know?

A. I don't know who it is.

Q. Is that Shawn's signature?

A. I don't know.

Q. But clearly somebody has signed as the F&I representative for Hillside Motors?

A. Yes.

Q. Okay. Look at the second page.

MR. SIMON: Of the exhibit or of the contract?

MR. LANE: Of the exhibit.

Q. The second page of the exhibit.

A. This one?

Q. Yes. Is this also dated 10/26/2013?

A. Correct.

Q. Who is listed as the dealer?

A. Hillside Motors.

Q. And also Gaganmeet Singh Bains is listed as the seller -- as the buyer; correct?

A. Mm-hmm.

Q. Customer or borrower, excuse me. Gaganmeet Singh Bains is listed as the customer or borrower?

A. Mm-hmm.

Q. This first page of the exhibit, you identified this as a vehicle service contract; correct?

A. Yes.
Q. Who is listed as the customer?
A. Gaganmeet Singh.
Q. Gaganmeet Singh Bains is the customer listed here?
A. Mm-hmm.
Q. Who is listed as the dealer on this contract?
A. "Planet Motor Cars" is signed here, but I don't know why you put here.
Q. I just wanted you to answer the question: Who is listed as the dealer?
A. You read it already on that paper. It's Planet Motor Cars.
Q. Thank you. And then who is listed as the lienholder?
A. Supposed to be the bank. This is Hillside.
Q. Is that Hillside Motors LLC as the lienholder?
A. Yes, this is error.
Q. Now what is the "vehicle in service date" on this contract?
A. October 26, 2013.

Mamdoh Eltouby

Q. And the customer signature and the dealer signature at the bottom; what is the date next to that?

A. 10/26/13.

Q. Do you know why Hillside Motors was listing Manhattan Planet Motor Cars as the dealer on a vehicle service contract in October of 2013?

A. It's 100 percent error.

Q. One hundred percent error?

A. Yes.

Q. Why do you know it's an error?

A. Because this supposed to be here. The lien is the bank.

Q. Okay.

A. It's not Hillside. The bank is the lien, because they borrowed the money from the bank, it's not borrowed the money from Hillside. It's total error here. Because the two other document it say clearly, clearly they say Hillside Motor. And the contract say Hillside Motor. It's not anything to say here, Planet Motor Car.

Q. Right.

Mamdoh Eltouby

A. Except that this could be, this is him making that error here and write "Planet Motor Car." I don't know why.

Q. Who is he?

A. I'm sure the finance guy.

Q. Why would the finance guy write "Planet Motor Cars" on documents for Hillside Motors?

A. Mistake. Error. Mistake. Human mistake. Because there's no Planet Motor Cars at all -- at all -- here.

Q. When did Planet Motor Cars stop doing business?

A. I think in 2013.

Q. And when did --

A. July.

Q. When did Hillside Motors start doing business?

A. I don't know. It's not my company.

Q. Yes, but your longtime partner is the owner.

A. I'm not partner and not owner. Just working over there buying cars.

Mamdoh Eltouby

Q. The woman you live with and that you have two children with is the owner of Hillside Motors; correct?

A. Probably you read it already. You read it already.

Q. You don't recall when she opened the dealership?

A. Excuse me?

Q. You don't remember when she opened the dealership?

A. No.

Q. In your experience, who fills out the vehicle service contracts at the dealership?

A. The finance manager.

Q. How does the finance manager fill out the service contract?

A. Probably computer.

Q. Probably computer? You don't know?

A. I don't know how he fill it. He write it, in a computer he write it. Would be the same mistake. Everybody make mistake.

Q. Is Shawn the only finance manager

Mamdoh Eltouby

at Hillside Motors?

A. No. Somebody named Cesar.

Q. Cesar is currently a finance manager?

A. No, he work for both.

Q. Cesar and Shawn --

A. Used to be working.

Q. Is Cesar still working there?

A. I don't know anything about Hillside Motor. Why you asking me the question? I'm telling you this is not my company. I don't know. I not even in the operation, I just only buying cars for this company, you know.

Q. I really want to get this straight. You said yesterday -- and correct me if I'm wrong -- yesterday you said that when Planet Motor Cars closed, you told Shadia that Shawn was a good finance guy and you encouraged Shadia to hire Shawn at Hillside; is that correct?

A. I don't know if you try to put, you know, words in my mouth.

Q. That's why I'm asking you to tell

me if it's correct.
A. I told you a couple of times. It's not my company.
Q. That's not the question. That's not the question. The question was: Did you refer Shawn to Shadia?
A. Refer is not even -- I get people from outside to work. Because I know so many people already in the industry of car business. I'm 25 years in the business and I know so many people. And I told you I consult people. I'm a New York independent dealer association. That's me. And I can consult any dealership in New York.
Q. Great. Can you answer my question? Did you suggest to Shadia that Shawn was a good finance guy?
A. Probably, yes.
Q. After you told Shadia that, did she hire Shawn to work at Hillside Motors?
A. You have to ask her this.
Q. Well, we certainly will.
A. You have to get deposition and ask her. I don't like to answer anything for

Shadia.

Q. Fine. I'm not asking you to tell me what Shadia said. I'm asking you, in your mind, in your experience, did you notice as a consultant at Hillside -- or in whatever role you have at Hillside -- that after you spoke to Shadia about Shawn she hired Shawn to work at Hillside?

A. Probably, yes, because he's working there now.

Q. Because he's working there now, okay. Now, again, what was your role at Hillside?

A. Excuse me?

Q. What is your role at Hillside? What is the title that you have?

A. I buying cars and sometimes consultant.

Q. Consultant?

A. Yes.

MR. LANE: I would like to have this exhibit marked as Plaintiff's Exhibit 7.

(Multipage document entitled

"Consent Order," referencing Gaganmeet Singh Bains, is marked as Plaintiff's Exhibit 7 for identification, as of this date.)

MR. LANE: Take a look at Exhibit 7. While Mr. Eltouby is looking at it, I will tell you, Richard, that the date is June 11, 2014.

THE WITNESS: Okay.

Q. Do you recognize this document; Exhibit 7?

A. Mm-hmm.

Q. You do?

A. Yes.

Q. What is this?

A. This is the complaint from -- from the customer. He just only, he wants money back.

Q. From which customer? Can you say his name, please?

A. His name is Gaganmeet Singh.

Q. Gaganmeet Singh Bains?

A. Bains, yes.

Q. Is that the same customer who was

listed on Exhibit 6 that we were looking at?
A. Yes.
Q. Is that right?
A. Mm-hmm.
Q. And he filed a complaint with the Department of Consumer Affairs; correct?
A. Yes.
Q. This is a consent order with the Department of Consumer Affairs and Mr. Bains; is that correct?
A. Consumer Affairs and Mr. Bains?
Q. Correct. It's a settlement agreement with Consumer Affairs and Mr. Bains?
A. Consumer, this is, I recommended this here. Mr. Simon -- Richard Simon -- he went to Consumer Affairs and he settled this.
Q. He settled Mr. Bains's complaint at Consumer Affairs?
A. Yes. He's here. Do you remember?
Q. Did you sign this agreement with Consumer Affairs?
A. Yes, he brought it to me and I signed it for him.
Q. Is that your signature at the

Mamdoh Eltouby

bottom of page four of this consent order?

A. Yes.

Q. Are you listed there as the president?

A. No.

Q. What does it say there above your signature? Can you read what it says just above your signature? Read the entire --

A. No. This is, sometimes this is new already, the settlement was anything that you have with any company and you write it, president. But it's not even president. But Mr. Simon, he was -- he is the one, the lawyer. He will settle everything.

Q. Did Mr. Simon represent you in this action at the Department of Consumer Affairs?

A. He represent the company, Hillside Motors.

Q. Let's be clear. This is a complaint. There was a complaint against Hillside Motors LLC?

A. Yes.

Q. On the first page of this consent

order, Hillside Motors LLC is listed as the respondent?

A. Respondent, yes.

Q. Hillside Motors LLC is the respondent?

A. Yes.

Q. Okay. And did you hire Mr. Simon to represent Hillside Motors?

A. Yes.

Q. You hired Mr. Simon to represent Hillside Motors?

A. No, I directed the company, and I say this is Mr. Simon. He can do this. And Shadia Ibrahim, the owner of the company, she hired him.

Q. Where were you when you signed this document?

A. I think I was with him in the Consumer Affairs.

Q. At the Department of Consumer Affairs?

A. Yes.

Q. Why did you go to the Department of Consumer Affairs?

A. I handle the company. I work in consulting for the company. We avoid any problem in the companies. Yes, I consultant in the company.

Q. So your title is consultant?

A. Consultant, yes.

Q. Then why did you sign this as president?

A. I was negligent. I don't see this in particular says "president" or the "owner" or something.

Q. Is it a false statement that you are the president of Hillside Motors? Is that a false statement?

A. It's not false statement. This is --

Q. So you are the president of Hillside Motors?

A. The customer --

Q. Were you the president of Hillside Motors?

A. No.

Q. So it's a false statement to say that you are the president of Hillside Motors?

Mamdoh Eltouby

A. The customer --

Q. I'm not asking about Mr. Bains in any way, shape or form.

MR. LANE: Please stop interrupting my deposition.

MR. SIMON: She asked me to say that.

MR. LANE: She didn't ask you a thing.

MR. SIMON: She said you're both talking at the same time. She said it. Get angry at her.

MR. LANE: Stop interrupting my deposition.

MR. SIMON: I refuse to abide by what you're telling me. She said she can't take both of you down, so I was telling him wait until the question is finished. That's not interrupting; that's trying to assist. I tried to assist, and you don't appreciate one iota my grandiose assistance.

MR. LANE: I don't appreciate your assistance and I don't appreciate your childish outbursts.

MR. SIMON: You're not god here. Ask him questions and he'll answer.

Wait until he finishes the question before you answer, okay?

MR. LANE: I want to be really clear. If you continue this like you were yesterday, we are going to get Judge Gold on the phone.

MR. SIMON: Get him on the phone if you want. Give me a break. Is that a threat?

MR. LANE: I'm just making it clear that we have limited time. People have said that they have to leave by 3:00.

MR. SIMON: You're uptight on court. Nobody cares and nobody listens. And that was from Cool Hand Luke, the movie.

Q. I'm not asking about Mr. Bains in any way. I am asking you: Was it a false statement, is it false to say that you --

A. What do you mean, false?

Mamdoh Eltouby

MR. LANE: Strike that.

Q. Is it untrue to say that you are the president of Hillside Motors?

MR. SIMON: Asked and answered. I object.

Q. You can answer the question: Is it a false statement that you are the president of Hillside Motors?

A. Fault?

Q. Yes.

A. I'm not faulting anything.

Q. "False."

A. I'm not faulting anything.

Q. Is it untrue that you are the president of Hillside Motors?

A. This is settlement only between the --

Q. That's not my question. Would you please answer the question?

A. I'm not president of Hillside Motors.

Q. You are not the president of Hillside Motors?

A. I'm not president of Hillside.

Mamdoh Eltouby

Q. Why did you sign a document that identifies you as the president of Hillside Motors?

A. Behalf of the company, behalf of the company.

Q. This document identifies you as the president of Hillside Motors.

A. Behalf of the company.

Q. Is it correct that this document identifies you as president of Hillside Motors?

A. I don't know what he's try to find out.

MR. SIMON: This is not a trial. This is discovery.

Q. Mr. Eltouby --

MR. SIMON: I just want to be heard here.

MR. LANE: No.

MR. SIMON: You have the document and his testimony. We are not trying this case now. Who are you trying to impress? This is not a trial and there's no jurors here.

MR. LANE: I'm trying to get the

answer to the question.

MR. SIMON: He answered it. He signed it.

MR. LANE: If you don't allow me to continue this line of questioning, we are just going to have to call Judge Gold. Would you please just relax and let him answer these questions?

MR. SIMON: I'm refusing to let him answer another question about this document. Let's draw a line in the sand. You've got everything you need about the document. He says he's not the president, yet he signed. What else? This is discovery.

MR. LANE: Will you stipulate that he signed this as the president of Hillside Motors?

MR. SIMON: He signed it. Whoever prepared that document said he was the president. Ask him if he prepared the document. He was given a document to sign and he signed it. What else do you want him to say?

Mamdoh Eltouby

Q. Mr. Eltouby, who prepared this document?

A. I don't know. It's a Consumer Affair paper. Is this not Consumer Affair?

MR. SIMON: Just answer the question.

Q. Do you know who prepared this document?

A. Consumer Affair, for settlement.

Q. Do you know if Mr. Simon reviewed this document before he gave it to you?

A. Yes.

Q. He did review it before he gave it to you?

A. He was with me.

Q. Did you read this document before you signed it?

A. Not really. I have my lawyer and I trust my lawyer.

Q. Did Mr. Simon tell you to sign at that line?

A. This is -- yes, tell me we got to be settle with the company and they send a check already. And this is -- we have this here is part of the settlement.

Q. Did Mr. Simon direct you to sign?

A. They have in the company.

Q. But he told you to sign the document? Mr. Simon told you to sign the document?

A. He is the lawyer from the case.

Q. Would you just answer the question yes or no?

A. Can you ask him? He's next to me. Just ask.

Q. I can't ask him at this deposition, but we may have to have another deposition where we call Mr. Simon as a witness. It's quite possible that we will have to do that.

MR. SIMON: Ask your question.

Q. For the moment, could you answer this question: Did Mr. Simon direct you to sign this document?

A. Yes.

Q. Thank you. We may have gone through this yesterday. Can you just remind me who are the lenders that did business with

Planet Motor Cars? Who are the lenders that did business with Planet Motor Cars in order to finance customers' car purchases?

A. M&T Bank. Santander. And what else -- uh, Capital One.

Q. Any others?

A. Wisdom Financial.

Q. Who are the lenders that had dealership agreements with Hillside Motors in order to finance customers' car purchases at Hillside Motors?

A. I don't know.

Q. You have no idea?

A. No idea.

Q. Yesterday, if you remember, Mr. Keshavarz had shown you documents from Mr. Tuhin's transaction. And there were multiple buyer's orders or bills of sale. Do you remember that?

A. Yes.

Q. You testified that there's really no difference between a buyer's order and a bill of sale?

A. It's a buyer's order when the

Mamdoh Eltouby

customer come into the dealership, dealing with the salesman. And the bill of sale is when the final buying the car. And they print it and sign it by finance guy.

Q. One of the things that Mr. Keshavarz was asking you about was the fact that in Mr. Tuhin's case, the buyer's order, bill of sale, they each had the same price for the car, but one of them itemized aftermarket product and the other one did not itemize anything.

A. Yes.

Q. Let me be clear. Let's get the document in front of us. I'm going to put Exhibits B and D from the deposition of Shahadat Tuhin in front of you. You looked at these yesterday with Mr. Keshavarz; right?

A. Correct.

Q. This is New York Motor Group buyer's orders or bills of sale?

A. Correct.

Q. This is Exhibit B. Exhibit B shows a selling price of $12,000 and then shows a service contract for $3,000 and then itemizes

Mamdoh Eltouby

some aftermarket --
A. "After-sale."
Q. After-sale products.
A. Mm-hmm.
Q. You call them after-sale products?
A. Call them after-sale products in the business.
Q. And Exhibit D does not itemize any after-sale product, except it does itemize a service contract for $3,000. But it has an inflated selling price of $22,795; correct?
A. Correct.
Q. Correct me if I'm wrong, but I believe what you had told Mr. Keshavarz yesterday is as long as the price is the same at the bottom, you don't think that there's any problem with these documents?
A. Correct.
Q. So are you aware that some of the sales at New York Motor Group involved multiple bills of sale that had different prices on them?
A. No.
Q. You're not aware of that?

Mamdoh Eltouby

A. No.

Q. Do you think that that ever occurred?

A. What?

Q. Do you think it ever occurred that there were sales at your dealership that used different bills of sale with different prices on them?

A. I have not knowledge of this.

Q. You don't have any knowledge of that?

A. I have no clue about this. I know very good this, the bill of sale, is coming from New York Motor Group only.

MR. LANE: These are double-sided. Let me submit this package. We will have to put a different label on it. Let's have this marked as Plaintiff's Exhibit 8.

(Document with heading of New York Motor Group, referencing Anwar Alkhatib as buyer, dated 12/18/12, is marked as Plaintiff's Exhibit 8 for identification, as of this date.)

Q. Could you look at these two pages marked as Plaintiff's Exhibit 8?

A. Yes.

Q. Are those bills of sale from New York Motor Group?

A. Yes. Not this one. This is buyer order and this is bill of sale.

Q. What is the difference between a buyer's order and bill of sale?

A. I explained before. I say the customer --

MR. GROSSMAN: Counsel, I'm sorry to interrupt but he's pointing to two documents. I think the record needs to reflect that.

MR. LANE: Sure, we'll make it clear.

Q. What is the difference between the buyer's order and the bill of sale?

A. I explained to you before. When the customer come into the dealership, he meet first of all with the salesman. Customer he want to pay whatever he want to pay. He want to, we say okay. This is not final; this is

Mamdoh Eltouby

the customer, he wants. He says here's the price for the car -- the customer he want to pay this, you know.

Q. Okay.

A. And then we take from him the deposit, like $200 or something, and here he go to the F&I, the financing, which is they finalize everything with him.

Q. So let me ask you: Are these two forms identical? And I'm not talking about the --

A. Yes, identical.

Q. -- information that's added, but the forms are identical?

A. Exactly. It's identical.

Q. But it is your policy or it was your policy at New York Motor Group to refer to this form as a "buyer's order" --

A. Buyer's order, yes.

Q. -- when the customer indicates their interest in buying the car --

A. Correct, yes.

Q. -- and then to complete a different one called a "bill of sale" --

Mamdoh Eltouby

A. Bill of sale. Finalize every number.

Q. -- after they have met with the F&I representative?

A. Yes, finalize with every number.

Q. Okay. So the one that you're calling a "buyer's order" -- in Exhibit 8 -- shows what as the selling price? What's the selling price showing on the buyer's order?

A. Sale price is $17,500, but it's obstructed -- or what's calling it?

Q. The lines down?

A. Yes, goes down. That's the customer, he wants to pay $13,000. He wants, but that's not finalized. He go to the F&I finance manager and the finance manager sit down with him and they sell him also the aftermarket, after-sale, to pay in the same time. It's like negotiating.

Q. I apologize if this was asked yesterday, but I just want to make sure I'm clear. This document that you're identifying as the buyer's order --

A. Buyer's order, which is between

the salesman and the customer.

Q. So this is not a binding contract between the customer --

A. No, no.

Q. -- and the dealership?

A. No, no.

Q. It is not a binding contract between the customer --

A. No. Because the customer, if he go inside and he sit down with the salesman or the F&I and finalize, he can say, "No, no, no, I don't want this. Give me my money back." That's it.

MR. GROSSMAN: The one with the stamp on it is the one that he's saying is not a binding contract?

MR. LANE: It is not a binding contract.

MR. GROSSMAN: Okay.

MR. LANE: We will call that "page one" of Exhibit 8.

MR. GROSSMAN: The one that has the stamp on it.

MR. LANE: Yes. It has been

identified as the buyer's order.

Q. Exhibit 8 has been identified as not a binding contract between the dealership and customer?

A. No, the customer, he can --

Q. The customer can back out of this contact?

A. He can say, "I don't want it, no," after he sees the number, the real number.

Q. So after the customer sees the cost of the loan and --

A. Yes.

Q. -- the cost of add-ons or after-sale products?

A. Yes.

Q. If he doesn't want the transaction he can back out?

A. Exactly.

Q. And get a full refund?

A. Correct. Look at this here. He paid $200. You think we going to hold him to $200?

Q. Okay. So I believe that Mr. Keshavarz reviewed this with you yesterday, but at the bottom of this contract -- at the bottom of either contract, either the bill of sale or the buyer's order, doesn't it say that there will be a forfeiture of 35 percent of the sale price of the vehicle?

A. This is standard bill of sale, the standard bill of sale, with all this writing. This you read here, all this here, you have to read this, all this stuff here. This is a standard bill of sale.

Q. Was it your policy to ever enforce the 35-percent forfeiture that is indicated on this?

A. No.

Q. You never intended that to be enforced?

A. No.

Q. Did you know that your employees would regularly try to enforce the 35-percent forfeiture?

A. I don't think so. It could be, but this I don't think so.

Q. It could be, but you don't think so?

Mamdoh Eltouby

A. Could be. Not in front of me, never in front of me.

Q. But why didn't you know whether or not your employees were trying to enforce a 35-percent forfeiture?

A. I don't -- I don't know if this is my -- my employees tried to force anything, or tried to enforce. I don't know this.

Q. You don't know?

A. I don't know. You're not allowed. You're not allowed.

Q. Did you ever tell your employees, "Even though the bill of sale says that there's a 35-percent forfeiture for a customer backing out after signing the bill of sale, never enforce the 35-percent forfeiture"? Did you ever tell your employees that?

A. Yes.

Q. You did?

A. Yes, I did.

Q. When did you tell your employees that?

A. From the beginning when they starting, you know, to work with us, you know.

Mamdoh Eltouby

I say I don't want any problems. I want a smooth and clean business. I don't want anybody to be complaining about us.

Q. But how did you train them on refunds for customers who wanted to discontinue a transaction?

A. I not train them, because they was trained already. I don't bring in people this first time they working in a car business.

Q. So you didn't train them?

A. I take people from used to be working for the car business.

Q. So you didn't train them when they started working at New York Motor Group?

A. No. I not train them, but this, I say I don't want any problem with any customer. I don't want a problem. We give him his money back.

Q. So do you have a written set of policies for the people who work at your dealership?

A. No.

Q. You do not have written policies?

A. No.

Q. Did you ever tell Alex that he was never to enforce a 35-percent forfeiture?

A. Sure, I tell him.

Q. You told Alex that?

A. Mm-hmm.

Q. Did you ever tell Julio Estrada that he should never enforce the 35-percent forfeiture?

A. Yes, I tell him.

Q. When did you tell that to Julio Estrada?

A. I tell him this because he -- I hear because he used to do. That's out of balance. I tell him not by me. I don't want anything or any -- anything from that. Forget about anything what you did Auto Palace here. I don't want any problem. I don't want any customer get complaint.

Q. When did you hear that he had done that at Auto Palace?

A. This is already in the press release from the DA.

Q. So when you read the press release --

A. Yes.

Q. -- you were aware that Julio Estrada would try to enforce a forfeiture on customers when they tried to terminate a transaction?

A. I hear, yes. I heard this.

Q. Where did you hear that?

A. I heard this from Angel.

Q. So you knew this before you hired Julio Estrada?

A. Yes. But I tell them is not by me, he cannot do this.

Q. Did you tell that to Dewan when you hired him?

A. Yes.

Q. Did you tell that to Mohamed, your sales manager --

A. Yes.

Q. -- before he started working at New York Motor Group?

A. Yes.

Q. Did you ever explain that to your daughter, Nada, before she started working at New York Motor Group?

Mamdoh Eltouby

A. Yes.

Q. Did you have a sales representative named Kevin at New York Motor Group?

A. Kevin?

Q. He spoke Chinese?

A. Oh, yes.

Q. Was his name Kevin?

A. Yes.

Q. Did you ever tell Kevin that they were never to enforce --

A. Yes.

Q. -- a 35-percent forfeiture?

A. Yes.

Q. Do you remember when you told this to Kevin?

A. When he come and work for us.

Q. When did Kevin start working for you?

A. Sometime in 2013, but I don't know exactly which month.

Q. Okay. Do you know Kevin's full name?

A. Not really.

Mamdoh Eltouby

Q. Do you have contact information for Kevin?

A. Used to. You know, he's a Chinese salesman famous in the Northern Boulevard. I can go up and down and find out where he work and I can get that for you.

Q. All right, that would be wonderful. I would like that.

A. Yes.

*RQ MR. LANE: We're going to leave a blank in the transcript. I will furnish a copy of the transcript to Mr. Eltouby's counsel, and Mr. Eltouby will provide us with the full name and all contact information for Kevin, the salesperson who spoke Chinese at the dealership.

INSERT: ____

INSERT: ____

Q. It may have been asked yesterday if you had the contact information for Dewan. I think you gave us a phone number for Dewan.

A. I gave the phone number and first name and last name.

Mamdoh Eltouby

Q. Last name, okay. And we know where to find Julio Estrada.

Do you have contact information for Angel Santiago?

A. Yes.

Q. Do you have it with you?

A. Uh.

*RQ MR. LANE: We will leave a blank in the transcript for Angel Santiago's contact information, and you will fill that in as well.

THE WITNESS: Yes.

INSERT: ____

INSERT: ____

*RQ MR. LANE: I think we already did this with Mohamed. You will try to find us contact information for Mohamed as well.

INSERT: ____

INSERT: ____

THE WITNESS: Okay.

Q. Did you have employee files?

A. Yes.

Q. Where are those files?

A. I put in storage.
Q. In storage?
A. Yes.
Q. We asked for those files, but they were never produced. Did anybody tell you that we asked for those files?
A. No.
*RQ MR. LANE: I'm going to call for production of all files on all employees working at New York Motor Group between 2010 and the present. I will put that in writing.
MR. SIMON: I note for the record. You mean the personnel files?
MR. LANE: I want any piece of paper the dealership has on any person who worked for them, whether it's a personnel file, contact information, Social Security numbers, IRS papers, performance reviews, proof of payment to these people. I will document exactly what I'm looking for and I will put it in writing. But I'm calling for production of all files related to every

employee who worked at New York Motor Group from 2010 to the present.

MR. SIMON: I'm just going to state that on behalf of New York Motor Group, regarding some of that information in these files there may be a privacy concern as to those particular employees. We may have to try to locate them or put them on notice of this request to give them an opportunity to file some objection.

MR. LANE: Sure.

MR. SIMON: Especially if there's Social Security numbers and personal information.

MR. LANE: We can probably talk about the extent of that. I don't want Mr. Eltouby doing anything that is going to be in violation of privacy concerns, so why don't you put it in writing and then we can talk about the extent of it.

MR. SIMON: As to their name and last-known address, you're entitled to that.

MR. LANE: Okay. I'm wondering, because we had testimony from Mr. Eltouby about the way he hired people and paid people, I think that we may be entitled to some evidence of the manner in which he employed people and paid people -- whether it's W-2s or not, and whether the W-2s have redacted confidential information or not.

Again, I'll put this in writing, we can talk about it, and if it's going to require a ruling from the Court, then we'll have to visit the Court.

MR. SIMON: Just note my objection, when you say that "he" paid people -- I understand there's an understanding that they were employees of the entity and were paid by the entity, not by an individual. Can you just put it in writing and we will try to give you as much information as we can.

MR. LANE: Let's clarify that.

Q. How did you pay the people who

worked at New York Motor Group?
MR. SIMON: Note my objection. Do you mean they were paid by New York Motor Group?
Q. If you understand the question, please answer it. How did you pay people who worked at New York Motor Group?
A. I think with checks, W-2.
Q. Who wrote the checks?
A. Accountant.
Q. Accountant?
A. Mm-hmm.
Q. Who was your accountant?
A. Mr. Ahmed Youssef.
Q. Ahmed Youssef?
A. Yes.
Q. A-H-M-E-D?
A. Yes.
Q. Y-U?
A. Y-O-U-S-S-E-F.
Q. Do you have Mr. Youssef's contact information?
A. Yes.
Q. Do you know it?

Mamdoh Eltouby

A. Not with me right now.

*RQ MR. LANE: We will leave a blank in the transcript for Mr. Youssef's contact information. I will serve the request on your counsel and you will provide us with that information.

INSERT: ____

INSERT: ____

Q. Did Mr. Youssef work permanently at New York Motor Group?

A. Not permanently. He's an accountant.

Q. Did he have other clients besides New York Motor Group?

A. Sure.

Q. Would he come to New York Motor Group to do accounting?

A. He come sometimes.

Q. Would he come to work with your books at New York Motor Group?

A. Yes.

Q. And he would write the checks for payment?

A. No. He sent me the checks.

Q. He sent you the checks?
A. Yes.
Q. Who signed the checks?
A. I signed the checks.
Q. Did Nada ever sign the paychecks?
A. No.
Q. And you would issue W-2s?
A. Yes. Payroll.
Q. To everyone?
A. We have a payroll company.
Q. You had a payroll company?
A. Correct.
Q. Who is your payroll company?
A. I don't know. He had it. Was a payroll company from California. I don't know what's the name exactly.
*RQ MR. LANE: We're going to leave a blank in the transcript for the name and contact information for the payroll company that processed payroll for New York Motor Group, and if you can provide that to us, you will.
INSERT: ______________________________________
INSERT: ______________________________________

MR. LANE: If not, will you authorize Mr. Youssef to tell us the name of the payroll company?

THE WITNESS: I would.

MR. LANE: Okay. So we will get it from you or we will get it through Mr. Youssef.

Q. And you did issue W-2s?

A. Yes.

Q. To every single employee?

A. Not to every, because some of them they coming and going, you know, stay not too long and leave. They don't like the atmosphere, or they don't like that it's far for them, or they don't like the payment or something. You know, they leave.

Q. And you would not give them a W-2, even if you paid them?

A. Stay only, you know, a week or something.

Q. No W-2?

A. We don't do. This is always. I tell Mr. Keshavarz yesterday, I tell him exactly that this is common. They test us and we test them. If it's good, they stay. If not good, they leave.

Q. Would you pay people for that first week?

A. You know, something, couple hundred dollars.

Q. I believe you testified yesterday that Julio Estrada did not get a W-2?

A. 1099.

Q. He got a 1099 to his entity -- not to him?

A. Yes.

Q. Were there other people who worked at New York Motor Group who got 1099s to an entity and not to them personally?

A. No.

Q. Everyone else was a W-2 employee?

A. Yes.

Q. Why did you not make Julio Estrada a W-2 employee?

A. Because he is, you know, isn't permanent. I'm told he is going to so many company and close, and sometimes he not coming. He don't want to be tied to the business. He go outside also and -- and closing deals for another dealership.

Q. So it was your understanding that he would not work exclusively for New York Motor Group?

A. No.

Q. Are you aware of what other companies he was working for at that time?

A. He don't tell me. He not tell me, but I know very good he go up and down the street to other customers, different companies. Last company he used to work for I think is Plaza Honda in Brooklyn. He get arrested fraud there, he get arrested also and, you know, fraud, and this, and whatever he do.

Q. When did you know that? When did you find out --

A. I find out from the DA.

Q. -- that he had been arrested; when was that?

A. This was after he left my business, maybe a couple of months.

Q. In 2014?

A. In 2014.

Mamdoh Eltouby

Q. Another area that we touched on yesterday -- we only had about an hour for me to start my deposition yesterday, so we started to talk about this issue where it looked to me like people were purchasing cars at New York Motor Group but then were receiving documents that listed Planet Motor Cars as the seller. I showed you --

A. Yes, this is what I explained to Ahmad Keshavarz. You know, this is the customer, he is getting approved, approved to Santander Consumer USA.

Q. I showed you a couple of exhibits, Exhibits 4 and 5, and one exhibit was with the documents from Anwar Alkhatib's transaction and the other were documents from Boris Freire's transactions. We noticed on Exhibit 4 that Mr. Alkhatib -- and, again, Exhibits 4 and 5 came from documents that were given to me by Bruce Minsky when I requested the transaction documents in your file folders related to all of the plaintiffs.

In Mr. Freire's case, we received a theft deterrent product protection

Mamdoh Eltouby

registration form. This is marked as Exhibit 4; correct?

A. I answered the same question yesterday.

Q. Well, I know.

A. You want me to answer again?

Q. I'm not going to ask you a bunch of questions about this. I just want to make sure that we're on the same page.

A. I answered this question 100 percent yesterday.

Q. Remind me why you think it is that Exhibit 4 has one document that lists New York Motor Group as the dealer, and then it has a second document -- which is the AUL service contract -- which lists Planet Motor Cars as the dealer?

A. I explained this. This is a customer of New York Motor Group and he cannot get approved for that two lender what we have.

Q. Okay.

A. And he approve already in Santander -- instead, we lose the customer. This is, he transferred everything to New York

Motor Group and we get the customer is approved from New York Motor Group through Santander, and the customer sign and acknowledge already this is he know very good that he's not approved from this identity and approved from other identity. And he go off and he sign the contract and he acknowledge. But sometimes this is -- was a paper trail, you know, this is the making, okay, the confusing, okay, the issue from here. Example, warranty, and then he say, okay, you know what, send him to New York -- to Planet Motor Car. And Planet Motor Car disclosing everything according, you know.

Q. Okay. And so if somebody needed a loan from Santander because they were a subprime borrower --

A. Yes.

Q. -- Planet Motor Car would have to do that deal?

A. Yes. Planet Motor Car have only Santander.

Q. But why was Jake Torres or Julio Estrada handling that deal at New York Motor Group?

Mamdoh Eltouby

A. He not in New York Motor Group?

Q. I'm sorry?

A. In New York Motor Group?

Q. In New York Motor Group.

A. Yes, he, because he know the banking, he know the banking business.

Q. Again, Was Julio Estrada authorized to sign documents on behalf of Planet Motor Cars?

A. Not really. He not sign anything.

Q. I know that we went through --

A. I don't know if he sign.

Q. We went through documents yesterday that showed --

A. This could be also this is, you know, he's showing this is, he is F&I. I telling you anybody also F&I you know sign anything, this irrelevant.

Q. Again, when we looked at Exhibit 4, we saw that you testified that Julio Estrada signed this document --

A. Yes.

Q. -- on behalf of New York Motor Group?

Mamdoh Eltouby

A. Yes.

Q. And we also looked at an exhibit. We also looked at -- I guess we didn't -- let me show you another document.

MR. LANE: Let's mark this as Plaintiff's Exhibit 9.

(Document is marked as Plaintiff's Exhibit 9 for identification, as of this date.)

oOo

(A discussion is held off the record.)

oOo

MR. SIMON: Can I see Exhibit 9?

MR. LANE: This is Exhibit 9. I'm putting Exhibit 9 in front of your counsel.

MR. SIMON: I thought he saw it yesterday.

MR. LANE: He saw -- yesterday, I showed him Exhibit 5.

Q. The first page of Exhibit 5 showed a New York Motor Group buyer's order; correct?

A. Correct.

Mamdoh Eltouby

Q. And the second page of Exhibit 5 is the first page of the retail installment contract for Boris Freire that I received in discovery production from Bruce Minsky.

I'm now putting Exhibit 9 in front of you, which is the complete first page of the retail installment contract for Boris Freire that Mr. Freire had a copy of.

A. It's the same thing.

Q. It is the same document. I'm showing you now the copy that I had from Mr. Freire. This is the a copy of Mr. Freire's retail installment contract that we produced.

A. It's the same.

Q. Okay. Now look at the bottom of the retail installment contract. Whose signature is there?

A. I did answer this yesterday.

Q. Could you just answer again? I'm sorry if you did. Just remind me.

A. This is Julio Estrada.

Q. Julio Estrada signed --

A. Yes.

Q. -- Mr. Freire's retail installment

sales contract?

A. Correct.

Q. Okay. And who is listed as the seller on Mr. Freire's --

A. Planet Motor Cars.

Q. Okay. And I just want to be clear, because yesterday you said Mr. Estrada was not authorized to sign documents on behalf of Planet Motor Cars.

A. This is finance, you know.

Q. I understand it's finance.

A. It's irrelevant as long as the customer, he signed the contract.

Q. So it's irrelevant?

A. Irrelevant which finance guy --

Q. It's irrelevant which --

A. -- signed it.

Q. -- finance guy signed it?

A. He signed the contract.

Q. So you're saying it is irrelevant?

A. Irrelevant. Any F&I finance. As long as the customer he sign in front of him, he is -- he can sign, you know.

Q. So Julio Estrada could sign

documents --

A. If --

Q. -- that listed Planet Motor Cars as the seller?

A. If I'm there, example, and you know, and I see the customer when he sign, I can sign the F&I too.

Q. Okay, so anybody could sign. What if I walked into the dealership and I happened to witness this; could I sign as the F&I guy, would it matter?

A. You?

Q. Yes.

A. You're not hired.

Q. Okay. So did you authorize Julio Estrada to sign documents that listed Planet Motor Cars as the seller?

A. I say it's irrelevant, again.

Q. It's irrelevant?

A. It's irrelevant that he sign. Was only my knowledge, or with my knowledge. I never tell him this is sign, but as he already did it, what I got to do? I tell him -- I punish him. But he sign already and he tell me

Mamdoh Eltouby

the customer was here and he signed the document in front of me.

Q. And it's your understanding that if this occurred, as we see in Exhibit 9, if it occurred that a customer at New York Motor Group needed subprime lending from Santander --

A. Then he would go to Planet Motor.

Q. They would be sent to Planet Motor Cars?

A. Correct.

Q. Okay, thank you.

MR. LANE: Let me now have this marked as Exhibit 10.

(Photocopy of an official check in the amount of $7,500 is marked as Plaintiff's Exhibit 10 for identification, as of this date.)

MR. LANE: For the record, the difference between Exhibit 5 and Exhibit 9 is that Exhibit 5 is just one part of the retail installment contract for Mr. Freire's transaction, and it's a copy of the retail installment contract that was produced by Bruce Minsky in response to discovery demands for the dealership's file related to Mr. Freire's transaction.

Exhibit 9 is the complete first page of the retail installment contract for Mr. Freire's transaction that Mr. Freire had a copy of that, and that I produced in discovery.

MR. SIMON: And that included the signature?

MR. LANE: That included the signature at the bottom of both Mr. Freire and, as Mr. Eltouby has indicated, the signature of Julio Estrada as the F&I representative.

Q. This is Exhibit 10. Take a look at that, front and back. What does Exhibit 10 look like?

A. Huh?

Q. What does that look like?

A. This is official check.

Q. It's a bank check?

A. Bank check, yes.

Q. Who is it made out to?

A. To New York Motor Group.

Q. And who is making the payment on that check?

A. What do you mean?

Q. What customer's name is on the check?

A. I don't know. I don't see any customer name.

Q. Whose name is listed above New York Motor Group?

A. Boris Freire, yes.

Q. Okay. So it's a bank check from TD Bank?

A. Mm-hmm.

Q. And it's regarding Boris Freire?

A. Yes.

Q. What date is on the check?

A. 20/18/2013 -- no. 2/18/2013.

Q. You can look at it. You don't need to show it to me.

How much money is the check made out for?

A. 7,500.

Q. On the back of the check, can you

Mamdoh Eltouby

tell who accepted that check?

A. I don't know who is signature, first of all. I say New York Motor Group. Is this cashed in my account, account number 6265019401? Which bank is this?

Q. I don't know.

A. I got to find out.

MR. SIMON: He didn't ask you that question. Just listen to his questions.

Q. Here's a question: When people gave bank checks to buy cars at New York Motor Group --

A. Yes.

Q. -- where did you deposit those checks?

A. This is the bank. The bank to the company.

Q. Which bank?

A. I have in this time Chase, and I have TD.

Q. Okay. So if somebody gave a large bank check as a downpayment on a purchase --

A. Right.

Q. -- you would deposit it with Chase

or TD Bank?
A. Yes. Any check.
Q. Any check at all?
A. Any check.
Q. There were only two banks; either Chase or TD Bank?
A. Yes.
Q. So does that look like a payment for Boris Freire's transaction?
A. Payment is downpayment, could be, yes.
Q. It's dated February 18, 2013?
A. Yes.
Q. What is the date on the bottom of Exhibit 9?
A. It's 2/19/2013.
Q. So, the next day?
A. Yes.
Q. We have established that Exhibit 9 lists Planet Motor Cars as the seller?
A. Correct.
Q. And you think that that's probably because Mr. Freire needed subprime lending --
A. Yes.

Mamdoh Eltouby

Q. -- through Santander?

A. Right.

Q. Which could only be arranged through Planet Motor Cars?

A. Right.

Q. If that's the case, why is Mr. Freire making a large downpayment to New York Motor Group?

A. Because he did the business over there, you know. He getting approved from Santander, but in his mind he coming to New York Motor Group, and he make the payment to New York Motor Group.

Q. Would you transfer --

A. He doesn't know.

Q. In his mind --

A. No.

Q. In the customer's mind --

A. No, he doesn't know he supposed to make a check to Planet Motor Cars.

Q. Would you transfer that money to Planet Motor Cars?

A. Yes.

Q. Yes?

A. Yes.

*RQ MR. LANE: Let me call for the production of all bank records for New York Motor Group. And to the extent that Mr. Eltouby has any control over it, we're going to call for production of all bank records for Planet Motor Cars during 2010 to the present. I think that's it, all bank records.

We need to see these transactions. We need to see the money going back and forth between Planet Motor Cars and New York Motor Group. He has testified that in the situation where a consumer, quote, unquote, "requires" subprime lending, that would have to be arranged through Planet Motor Cars. And if a consumer made the deposit to New York Motor Group for a transaction financed through Santander and Planet Motor Cars, that New York Motor Group would then transfer the money to Planet Motor Cars.

We are absolutely entitled to the information related to that, now that he has testified to that. And we're going to call for production of all the bank records for New York Motor Group -- and to the extent that he has control over it, for Planet Motor Cars.

MR. SIMON: Freire assumed that New York Motor Group was the seller; right?

MR. LANE: And Planet Motor Cars.

MR. SIMON: And Planet Motor Cars; both.

MR. LANE: And Mr. Minsky has indicated that he represents both Planet Motor Cars and New York Motor Group, so it really doesn't matter whether or not Mr. Eltouby personally has control over it. It's going to have to be produced, because somebody hired Mr. Minsky to represent New York Motor Group and Planet Motor Cars.

Q. In fact, next question: Did you hire Mr. Minsky?

A. Yes.

Q. Did you hire Mr. Minsky to

Mamdoh Eltouby

represent Planet Motor Cars in these cases?

A. Yes.

Q. Thank you.

MR. SIMON: But you're not confining your request for bank records to the Freire transaction?

MR. LANE: I am not, no. I'm requesting the bank records for both businesses from 2010 to the present. I don't really think I need to limit it. We need to see money going in from customers and money that's transferred back and forth between the companies, because he has now just indicated that that money would transfer back and forth between them.

MR. SIMON: But you don't just want bank records pertaining to the Freire transaction; you want all the bank records?

MR. LANE: Yes.

MR. SIMON: For what period of time?

MR. LANE: From 2010 to the

present.

MR. SIMON: For which entities?

MR. LANE: Both entities. New York Motor Group and Planet Motor Cars.

MR. SIMON: We will take that under advisement, but if the bank imposes fees and costs on that, is your office willing or your client willing to reimburse the bank's charges?

MR. LANE: I'm not agreeing to that, no. Where are the costs for that? You get your banking statements, your monthly banking statements.

MR. SIMON: I just asked. And the question was "if" the bank imposes charges.

MR. LANE: No, I'm not agreeing to that. If you want to make a motion about it, we'll do whatever we need to, but I'm not agreeing to that, no.

MR. SIMON: All I said is we'll take under advisement your request. And you didn't limit it to any particular bank.

MR. LANE: All the banks that both companies do business with.

Q. You indicated that New York Motor Group only did --

MR. LANE: Excuse me, strike that.

Q. Is it correct that you indicated that New York Motor Group had two business banking accounts; one at Chase, and one at TD Bank?

A. Correct.

Q. Did it have any other accounts where it put customer payments?

A. No.

Q. What were the banks that Planet Motor Cars deposited customer payments into?

A. Chase.

Q. Chase?

A. Mm-hmm.

Q. And?

A. And HSBC, but it's closed. That's a long time ago.

Q. Did you open the accounts on behalf of Planet Motor Cars at Chase and at HSBC?

Mamdoh Eltouby

A. Yes.

Q. And did you open the accounts on behalf of New York Motor Group in TD Bank and --

A. Yes.

Q. -- Chase?

Did you ever put money from the dealership into your personal account?

A. From the dealership to my personal account? No, I got only my salary.

Q. And you paid yourself from New York Motor Group's accounts?

A. Again, this is already payroll company.

Q. Payroll?

A. Yes.

Q. And would payroll draw the money to make payroll checks from TD Bank or Chase?

A. For which dealership?

Q. For New York Motor Group.

A. Yes.

Q. From either one?

A. The amount of this is supposed to be already reported, you know.

Mamdoh Eltouby

Q. Right, through the payroll.

A. And this is the same amount.

Q. Was that money drawn from the TD account?

A. It's not drawn. It's only checks.

Q. If the payroll company is creating the checks, where was the payroll company taking the money from to pay the checks?

A. Payroll company is not taking the money. This is only making the check and they send it to us, and we sign and give it to everybody.

Q. What bank did you pay people out of?

A. Chase, I think.

Q. And what bank did Planet Motor Cars use to pay employees?

A. Chase.

Q. Did you draw a salary from Planet Motor Cars?

A. Salary? Not really.

Q. But you drew a salary from New York Motor Group; correct?

A. Before.

Q. You used to get a salary from Planet Motor Cars?

A. Before -- before New York Motor Group opened.

Q. Before New York Motor Group opened?

A. Yes.

Q. What was your salary when you worked at Planet Motor Cars?

A. I don't remember exactly what.

MR. SIMON: Note my objection to the relevancy. You can answer.

A. This is -- I don't have it right now.

*RQ MR. LANE: We will leave a blank space for you to fill in the salary at Planet Motor Cars.

INSERT: ______________________________________

MR. LANE: I will follow up in writing with your attorney to get the amount of the salary that you drew from Planet Motor Cars when you worked there, including the dates that you took that salary.

Mamdoh Eltouby

Q. What was your salary at New York Motor Group?

MR. SIMON: Note my objection to the relevancy of the question.

A. I don't remember. I got to be, I got to get it also -- that will be provided from my accountant.

*RQ MR. LANE: We will leave a blank space for the amount of your salary from New York Motor Group.

INSERT: ______________________________________

MR. LANE: We will get that information from your accountant and will follow up in writing with that request.

Q. Did you get the same amount each month or would it change?

A. Yes.

Q. Same amount?

A. Same.

Q. Would you get paid monthly or every week?

A. Monthly.

Q. Once a month?

Mamdoh Eltouby

A. Mm-hmm.

Q. Did Nada receive a salary from New York Motor Group?

A. Actually not. She was living with me. I give her whatever she wants.

Q. You gave her cash when she needed it?

A. No, this is my daughter.

MR. SIMON: Keep your voice up so she can hear you.

A. I say, it's my daughter. I provide everything for her.

Q. But you did give her cash when she asked for it?

A. I gave her cash, yes. How you dealing with your kids? You give them cash or you give them checks?

Q. I'm not answering questions at a deposition.

A. Okay. You want me to make the payroll in the house? I have to give my kids and my wife also.

Q. I don't know exactly what you do, but that's why I'm asking.

A. Okay.

MR. GROSSMAN: Can I just take a two-minute break to the men's room?

MR. LANE: Off the record.

(A brief recess is taken.)

oOo

Q. Mr. Eltouby, let me ask you about Anwar Alkhatib. Do you remember anything about Anwar Alkhatib?

A. Yes.

Q. What do you remember about him in that transaction?

A. I remember this is, he is, he come in buying cars from all the way in New Jersey, you know, and he know very good the car in his market -- this is much more money than what we have, you know. And when he put the car, he put also the aftermarket, after-sale, and he denied -- after he bought the after-sale and sign it and everything, he denied, and he say, "No, I want the car with this price." I said the market for the car is very high until now, because the car is Honda Odyssey, you know, is touring package, you know, the best of the

Mamdoh Eltouby

best. That means the top, top line of car.

Q. Were you present during his negotiations to purchase the car?

A. I was not there, because I heard, and I offer him -- I tell him "Give me the car back. I give you all your money back."

Q. When did you tell him that?

A. I tell him this when he start to make a lawsuit. I tell him, I offer him, "Mr. Alkhatib, Give me the car back, take your money." I can sell the car for anybody else.

Q. When did you say that to him?

A. I say this before. He say, "No, I keep the car and I not take money from you."

Q. What date did you say this to him?

A. This was before he did, he did the Federal Court. He did sue us in the Federal Court, and my lawyer he tell me it's going to be cost a lot of money, in Federal Court it cost a lost of money, it's better off taking the car back. I offer him taking the car back from him, you know, and give him all his money with whole expense. But he not very good because he cannot find a cheap car like this, and he stupid, he say, "No, no, no, I want take the car, and I take the money."

Q. Did you say this to him?

A. Yes, I say this to him.

Q. When did you say this directly to him?

A. I say this, we say -- we call him in the phone and we tell him this, we offer him this.

Q. You did this to him after he had hired an attorney?

A. After, I think, hired attorney. Then we meet in federal court after this.

Q. Yes?

A. Meet in federal court. The judge secretary say, "Listen, if you go for this case -- which was the first case -- if you go through this case, it's going to be cost you at least $30,000. Ask your lawyer. Would you pay him something?" I say, "Okay, yeah, we settle." Then he say $6,000, he want take $6,000 back.

Q. I'm not really asking you about the negotiations for settlement. I'm asking you about Mr. Alkhatib's transaction.

A. Yeah. Then we agree already on everything, but Capital One was not agreeing.

Q. Again, I'm not really asking about that.

A. Yeah. But --

Q. Did you ever see the advertisement for the vehicle that Mr. Alkhatib purchased?

A. Yes.

Q. Do you remember whether or not it was a Honda Odyssey?

A. Yes.

Q. EX-L?

A. EX-L, yes.

MR. LANE: Can we mark this as Exhibit 11.

(Document is marked as Plaintiff's Exhibit 11 for identification, as of this date.)

Q. Take a look at that.

A. Yes, $14,995, almost $15,000.

Q. Is Exhibit 11 an advertisement for the Honda Odyssey --

A. Yes.

Q. -- that Mr. Alkhatib purchased?

A. Yes, but this is the disclosure. We only printed this -- we not print disclosure in the website, which says according to this only finance and loan finance, and must be coming with downpayment and this, like everybody.

Q. So what does the disclosure tell someone?

A. Yes, the disclosure, this what I explained to you. This is called, you know, disclosure. This is amount of finance, and must be customer come in with downpayment, and according also for the lender 700 credit score and above, you know.

Q. Where would it tell me that in the advertisement?

A. In the website for the dealership.

Q. In the website for the dealership?

A. Yes.

Q. But this is not from the dealership. Do you see the website listed at the bottom?

A. This is internet. When we asking

Mamdoh Eltouby

the customer to go to the dealership and go into the exactly advertised and come to us.

Q. What is the website on the bottom of this page? Cars-dot-com?

A. Which one is this? Yes, cars-dot-com.

Q. Would advertisements on cars-dot-com have that same disclosure?

A. No.

Q. No?

A. Because the company is not allowed to put any disclosure.

Q. So when the dealership, when New York Motor Group advertised on cars-dot-com, they did not include that disclosure?

A. Yeah, but we tell the customer before they come in to get a print of the advertisement from our website coming over.

Q. When do you tell them that?

A. This is the girl, she working as a BDC -- which is the telemarketing for the dealership. Telemarketing.

Q. What if somebody did not call her before they come in?

Mamdoh Eltouby

A. No, they always call to ask the price of the car.

Q. What if they didn't?

A. It cannot be coming from the site, you mean?

Q. What?

A. Yes, we tell him. We tell him this is the price, you understand, additional downpayment. This the sales manager tell.

Q. So after they arrived at the dealership, then the sales manager would explain that? And if all they saw was the price advertised on cars-dot-com, they didn't understand that there was also a disclaimer that they couldn't get this price unless they had a certain credit score?

A. Most of the people they come in from out of state.

Q. No, no, no. Answer my question.

A. Yes.

Q. If somebody had just seen this on cars-dot-com, if someone sees that the Honda Odyssey is being sold for $14,995, and they just take that and they go into the dealership and they say, "I want to buy the Honda Odyssey advertised at $14,995," would one of your salespeople at that time then tell them, "Well, that price is only if you have a certain credit score"?

A. Yeah, and fees, and so on.

Q. And they would explain that at the dealership?

A. Yes, explain it at the dealership.

Q. Thank you.

I will put Exhibit 8 back in front of you. You identified Exhibit 8 previously as the buyer's order that was filled out in Mr. Alkhatib's transaction; correct?

A. Yes.

Q. What price is listed on the buyer's order filled out for Mr. Alkhatib's transaction?

A. Seventeen -- uh, 14,995 -- no -- seventeen. It looks like seventeen.

Q. To me, it looks like it says $17,500.

A. Looks like to me also, $17,500.

Q. And then $17,500 is crossed out;

right?
A. Yes.
Q. And there's an arrow pointing down to what price?
A. He want to pay 13,995 -- he want to pay.
Q. Fine.
A. But this means sold him on this here. You see the arrow coming down here?
Q. Right.
A. The salesman he tell him, okay, finalize, but let me see your credit first, and we're going to see according to your lender and the --
Q. The salesman tells him that?
A. The salesman tell him, yes.
Q. But does it say that anywhere on the buyer's order?
A. This is, no, subject to -- promise -- do you see here? Do you see these words?
Q. Can you read that?
A. You cannot read it?
Q. Does it say, "Subject to primary

Mamdoh Eltouby

lender approval must finance with New York Motor Group banks"?

A. Correct.

Q. So then what you're saying is that while the buyer's order indicates a price of $13,995, there's no guarantee that somebody can get that price?

A. Yeah, there's no guarantee.

Q. And your salespeople or the salespeople at New York Motor Group should have also explained that he can only get that price if his credit score is at a certain number?

A. No, no, no.

Q. So what is going to affect a change to that price?

A. This is only the finalize this the F&I, finance guy, the only one.

Q. So what would the salesperson tell him about this price?

A. Only the one he discuss about the score and the lender and something, the finance guy. Because this is confidential.

Q. But, again, it was your testimony that Exhibit 8 -- the buyer's order -- is not a

binding contract on the --
A. No.
Q. -- seller or the buyer?
A. No, no. He can go elsewhere. If he don't like the deal, all the deal, he say, "No, I don't want it."
Q. But, again, does the seller's order have any information aside from this handwritten note --
A. No.
Q. -- that tells somebody that they may not get the price of $13,995?
MR. SIMON: That's the buyer's order. You covered the seller's order.
MR. LANE: Thanks.
Q. Is there any other information on here, aside from the handwritten note, that let's a buyer know that they may not get the listed price on the buyer's order?
A. The salesman, you see here, he write for them --
MR. SIMON: Listen to the question and answer him.
A. I don't understand.

Mamdoh Eltouby

Q. Here's the question. Here's what I want to know: I asked you before if the buyer's order disclosed that this price could change based on financing information. You said that there was a handwritten note that tells them this price is subject to the primary lender approval, and it requires that the buyer finance through New York Motor Group?

A. Correct.

Q. Is there anything else on this form that would let a consumer know that any price listed here is going to be subject to a lender's approval?

A. No.

Q. And again, Exhibit 8, this buyer's order, and any buyer's order at New York Motor Group, was never intended to be a binding contract on --

A. No.

Q. -- the seller or the buyer?

A. Not any. This one here, the particular, this is written in the hand between the salesman and the customer.

Q. Okay.

A. And the customer can void it anytime and say, "No, I don't want it, I don't want to even go to the sales, the F&I," you know, "Give me my money back, 200, and leave." You know?

Q. All right.

MR. LANE: Let's have this marked as Exhibit 12.

(Document on letterhead of Planet Motor Cars is marked as Plaintiff's Exhibit 12 for identification, as of this date.)

Q. Look at Exhibit 12. It's another document that was produced by the dealership -- by New York Motor Group or Planet Motor Cars -- when we requested production of documents related to Mr. Alkhatib's transaction. Do you recognize Exhibit 12?

A. Yes.

Q. What is that?

A. This is, you know, the customer -- also when the customer take the car and the F&I, he get paid all for the commission, commission for the reserve. You know what is

Mamdoh Eltouby

"Reserve"?

Q. Please explain to me what the reserve is.

A. Reserve also when you market -- say, example, the loan accepted from the bank is 6 percent and you market the loan as, legally you can market the loan one percent or two percent.

Q. Meaning you, the dealership, can increase the interest rate by one or two points?

A. Exactly. This is legal.

Q. Above whatever the bank --

A. Exactly. The customer, example, he paid the loan fast and then the bank take the money back.

Q. So let me understand this. If my loan has been approved by a bank --

A. Correct.

Q. -- at a rate of 6 percent interest --

A. Yes.

Q. -- legally, the dealership could increase the rate of a loan up to 8 percent?

Mamdoh Eltouby

A. Correct.

Q. Over the life of the loan, the dealership is going to receive the difference between financing on 6 percent and financing on 8 percent?

A. Yes.

Q. How is the dealership going to receive that money?

A. They receive 75 percent.

Q. Seventy-five percent of the difference between 8 percent and 6 percent financing?

A. Yes, yes.

Q. When I say "financing," I mean the finance charge. So for example, if my loan at 6 percent has a finance charge of $10,000 over the life of the loan --

A. Correct.

Q. -- but the loan at 8 percent has a finance charge of $12,000 over the life of the loan, the dealership is going to receive 75 percent of the $2,000 difference?

A. Correct.

Q. How often is the dealership going

to get paid?

A. Reserve. This is after the deal happen, is the bank send us, you know, separate reserve.

Q. Would they send all 75 percent at once?

A. Yes. It's in the deal, in the deal.

Q. If I then take that deal and two months later get a better deal from a different bank and I go to refinance, what happens to the dealership's reserve?

A. The bank take the money back.

Q. They contact you?

A. Yes.

Q. And they demand --

A. Yes.

Q. -- that you return all 75 percent?

A. Yes, correct.

Q. So, return the entire reserve payment?

A. Correct. It's legal by New York. Also by any new car dealer and the department. Everybody is agree about it.

Mamdoh Eltouby

Q. Because there was the risk that you would lose the reserve, you would ask your customers or you would require your customers to agree not to refinance the loan for the first six months?

A. Correct.

Q. If they refinanced the loan in the seventh month, would they not demand the reserve back?

A. That's correct.

Q. Every bank that New York Motor Group and Planet Motor Cars worked with, would they all demand their reserve back if the loans were refinanced --

A. All.

Q. -- in the first six months?

A. All. Every one.

Q. They always would?

MR. SIMON: Note my objection to the question, because it presumes each bank has the same arrangement. Some may be four months, some may be eight months, some may be two months.

MR. LANE: The question was pretty

Mamdoh Eltouby

clear: Would they all do it, if somebody refinanced within the first six months? And he seems to understand the question, and he answered it.

MR. SIMON: Okay.

Q. If the bank demanded a reserve be returned because of refinancing within the first six months for example, would Planet Motor Cars or New York Motor Group enforce this agreement against the customer?

A. It never happen.

Q. It never happened?

A. Never happened.

Q. So you used this document, but you never enforced it against customers?

A. Never happened.

But this, the F&I, he tried to put himself, this commission, solid.

Q. Because the F&I's commission --

A. Yes. We not do this, nobody do this. This is only sometimes F&I. You know, this is the finance manager, you know, try to, you know. But usually we not do this, you know.

Mamdoh Eltouby

Q. You don't use this document at all --

A. No.

Q. -- in the dealerships you have worked at?

A. No.

Q. But if a finance representative used this document, you weren't concerned?

A. This is not really relevant.

Q. Was the finance representative's commission dependent on the reserve?

A. Yes.

Q. If you lost the reserve --

A. I charge him back also.

Q. You charged the finance representative part of the commission back?

A. Yes, yes.

Q. Was the reserve the only profit that the dealership made on the sale?

A. Some of the profit. Sometimes you sell the car and you get only -- you want to only get the car out.

Q. So there were deals where the sale of the car for cash would not result in a profit?

A. No, no.

Q. No profit?

A. There's no reserve, no nothing.

Q. That's what I'm saying. Let's take Mr. Alkhatib, for example. If he had wanted to purchase this car with $15,000 in cash, would the dealership have made any profit on that sale?

A. No.

Q. The only way the dealership would make a profit is if there were financing with a reserve payment?

A. Offer him after-sale.

Q. Oh, with the after-sale?

A. Yes.

Q. So how did profits work for the after-sale products? Let me rephrase that.

MR. LANE: Let's take a specific example in Mr. Alkhatib's case. Let's mark this as the next exhibit.

(Vehicle service contract on letterhead of AUL is marked as Plaintiff's Exhibit 13 for

Mamdoh Eltouby

identification, as of this date.)

MR. SIMON: Wasn't this shown to the witness already? I think it was.

MR. LANE: That's right. It was part of Exhibit 4.

MR. SIMON: Do you want to use Exhibit 4 instead of remarking?

MR. LANE: It's fine.

Q. Tell us what Exhibit 13 is.

A. It's a service contract.

Q. It's a service contract in Anwar Alkhatib's transaction?

A. Yes.

Q. It's identical to Exhibit 4; correct?

A. Correct.

MR. LANE: I will tell you. I will disclose that the only difference is that Exhibit 13 is the copy that Mr. Alkhatib had, and that I produced. And Exhibit 4 is the copy in the dealership's file that was produced by Bruce Minsky in response to our discovery demands.

Q. Look at Exhibit 13. It's a service contract with what company?

A. Planet Motor Cars.

Q. Who is the service contract vendor?

A. AUL.

Q. Did New York Motor Group or Planet Motor Cars --

MR. LANE: Strike that.

Q. Did New York Motor Group have a contract with AUL?

A. I think so, yes.

Q. And did Planet Motor Cars have a contract with AUL?

A. Yes.

Q. What was the nature of that contract? Describe it to me.

A. It's not contract. We sign with the company.

Q. You what?

A. We sign with the company, you know. It's one of the vendors.

Q. But did you sign a contract with the company?

Mamdoh Eltouby

A. It's a vendor, yes.
Q. If New York Motor Group sells an AUL service contract, how much money would AUL get from the transaction?
A. I don't remember, I don't remember. Every transaction is different.
Q. How much money, even if it's just a percentage, would New York Motor Group get from the sale of the service contract?
A. I don't remember, because everyone is different, different.
Q. Is there a contract price on here?
A. You can see it here, 36 months.
MR. LANE: He's not testifying. He's reading to himself.
MR. SIMON: He's mumbling.
Q. Do you see where it says "term"?
A. Term.
Q. And it says a 36-month term?
A. Thirty-six, yes.
Q. And it's for 36,000 miles?
A. Correct.
Q. So the term of coverage is either 36 months or 36,000 miles?

Mamdoh Eltouby

A. Correct.

Q. Below the 36,000 miles, doesn't it say "single payment contract price"?

A. Yes, yes. Contract cost $3,000.

Q. The contract costs $3,000?

A. Correct.

Q. If the contract sold for $3,000, would the dealership get all $3,000?

A. I don't understand. Can you repeat it?

Q. If this contract were sold for $3,000, would the dealership receive all $3,000?

A. Receive all the $3,000 from the customer, and pay for the contract.

Q. How much would the dealership have to pay for the contract?

A. I don't know. Again, every car is different. Because this is --

Q. Was there an agreement between the dealership and AUL that would tell you how much you could keep and how much it would cost?

A. No. This is how much is the cost for the contract. You have a list. So especially of the car, it's a minivan or a regular car, it's different prices.

Q. Okay. But the dealership would make a profit from selling this contract?

A. Absolutely.

Q. Okay. The amount of the profit depended on the cost of the car?

A. Cost of the contract.

Q. The cost of the contract?

A. Correct.

Q. Because the contract could cost more for certain cars?

A. Correct.

Q. I suppose it would also cost more if the terms were longer or shorter?

A. Yes.

Q. The type of coverage?

A. Correct. You're a car dealer by now.

Q. What's that?

A. You're a car dealer by now.

Q. I'm learning.

Was there a written agreement, a general written agreement? For example, New

York Motor Group had written agreements with the lenders, they had dealership agreements with the lenders; correct?

A. Yes.

Q. And you would sign that agreement on behalf of the dealership?

A. Not really me. Could be the finance manager, because the finance also, the company -- the company give him also which is the contract. When they sell the contract they give him also additional hundred dollar or something, each contract.

MR. LANE: It's a minor point. I'm not going to make it.

(A discussion is held off the record.)

Q. Here's what I want to know. As an example, New York Motor Group had an ongoing agreement with M&T Bank --

A. Correct.

Q. -- that it would, for example, that it would assign retail installment contracts to M&T Bank --

A. Correct.

Mamdoh Eltouby

Q. -- if M&T Bank was willing to take the contract; correct?

A. Yes.

Q. And you had an ongoing agreement and it was written down and it was signed by the dealership and it was signed by M&T Bank; correct?

A. Yes.

Q. Did you have a written agreement like that with AUL, that would say on a regular basis you would sell AUL service contracts and remit payment to AUL for the service contracts? Was there one general written agreement between New York Motor Group and AUL?

A. Let me explain. The bank is different than the warranty company.

Q. I understand.

A. Because the warranty company is have like a thousand warranty companies.

Q. I understand. All I want to know is, was there a legal --

A. When they come and they sign the F&I, he sign, because he give them money.

Q. Did somebody sign the written

contract?

A. Yes, yes, somebody sign.

Q. I asked for copies of that in discovery before, and it has never been produced. So if somebody signed that contract, does it exist somewhere?

A. This is in, that company is in California.

Q. But do you have a copy of the contract that was signed with --

A. I have to call the company and see which, who signed this first.

*RQ MR. LANE: We are going to call for production again. We will reiterate our demand for all contracts signed by either New York Motor Group or Planet Motor Cars with AUL for service contracts. We're also going to call for production of the contracts that New York Motor Group or Planet Motor Cars had with any vendor of after-sale products as they have been identified by Mr. Eltouby. This will certainly include Technology Insurance Company and any other vendor who provided aftermarket products that were sold -- after-sale products that were sold by New York Motor Group during the transactions.

MR. SIMON: You are limiting that?

MR. LANE: I'm sorry, it's going to be from New York Motor Group and from Planet Motor Cars. Go ahead. Am I limiting it to?

MR. SIMON: To the plaintiffs in related cases, to the after-sale warranties and products that they purchased?

MR. LANE: No, we're not going to limit it to just the plaintiffs. It's going to be a request for all the contracts with all vendors of after-sale products at New York Motor Group or Planet Motor Cars.

MR. SIMON: For any customer?

MR. LANE: Any customer whatsoever.

MR. SIMON: During what period of

time?

MR. LANE: 2010 to the present.

MR. SIMON: We'll take it under advisement.

MR. LANE: To be clear, I'm not wanting to see the contract given to the customer. I want the contract --

THE WITNESS: The agreement?

MR. LANE: The agreement between the dealership and the vendor.

THE WITNESS: I understand.

MR. SIMON: The master agreement?

MR. LANE: Yes.

Q. And again, just so I understand whether we were talking about AUL or whether we were talking about the theft deterrent product protection -- which was the other part of Exhibit 4 -- if New York Motor Group or Planet Motor Cars sold that product, New York Motor Group or Planet Motor Cars would make a profit on the sale of that product? Please answer yes or no to that.

A. Yes.

Q. Just to be clear, what you were

saying was that these products were part of the way that New York Motor Group and Planet Motor Cars made a profit on the sales?

A. Yes.

Q. Is that because oftentimes selling for just the cash price of the vehicle would not make any profit for the dealership?

A. I don't understand the question exactly. Repeat it again.

Q. Let me give you an example.

MR. LANE: Can we mark this.

(Document with heading of Manheim.com, entitled "Buyer Vehicle History Details," is marked as Plaintiff's Exhibit 14 for identification, as of this date.)

(A discussion is held off the record.)

oOo

MR. LANE: Why don't we talk about that afterwards, Richard.

I'm sorry, I feel like the record is going to be confusing at this point, and I just want to make it clear.

Mr. Simon was asking me something off the record before we went back on the record.

MR. SIMON: We were off the record.

MR. LANE: I know. But I believe I made a comment on the record while we were talking about it afterwards, Richard. I want to be clear that I was only referring to something Mr. Simon asked me about discovery, and that we are not going to discuss on the record. We will talk about it afterwards.

MR. SIMON: I didn't know. I assumed we were all off the record.

MR. LANE: It made it on the record, and I just wanted to clear it up so that it doesn't look weird.

MR. SIMON: Now that we're back on the record, I just want to object to the form of the last question that was asked of my client.

MR. LANE: The question was asked and was answered, and now you're going

Mamdoh Eltouby

to object to the form of it? Okay.

Q. Take a look at Exhibit 14.

MR. SIMON: While he's looking at that, I just objected to the form. You were referencing profit.

MR. LANE: Oh, right. Well, that's why we're clarifying.

MR. SIMON: Profit means many things to many people.

MR. LANE: That question is withdrawn, and we're going to clarify it.

MR. SIMON: Just so there's no misunderstanding, while he's looking at the document. Dealerships have other costs associated with their business, rather than each car, the profit and loss and each transaction. They have other fixed costs. That's why I objected to the use of the word "Profit." Are you looking at this document?

THE WITNESS: Yes.

MR. SIMON: Tell him when you're

Mamdoh Eltouby

ready to answer questions about it.
A. Okay.
Q. Do you recognize what Exhibit 14 is?
A. Yes.
Q. What is it?
A. I think this is somebody inquiring, the car was sold in auction for how much.
Q. Again, I'm not sure I know what it is, but I'm asking you. Is it a statement of how much a particular car would have cost at an auction?
A. In auction, yes.
Q. This document was produced to Mr. Tuhin's counsel as part of initial disclosures, and so it was given by the dealerships to Mr. Tuhin's counsel. Does this document look like a printout from the website for Manheim.com?
A. Mm-mm.
Q. And is Manheim one of the auctioneers?
A. Auction. Not auctioneers.

Mamdoh Eltouby

Auction. It's an auction place and they have so many auctioneers that auction the cars.

Q. So Manheim is a place where auto auctions occur?

A. My vendor.

Q. Your vendor?

A. Vendor. I buy from Manheim.

Q. You buy from Manheim?

A. Yes.

Q. So what is the sale price listed for the car on this document?

A. It's $15,600. Then the auction fee is $350. The total is $15,950 without any other fee, which is the floor planning. Without transportation. Without, you know, floor planning.

Q. Okay. So how much did it cost New York Motor Group to buy that car at an auction?

A. I buy this car under --

Q. I'm sorry. Who bought the car?

A. I bought the car under Palisades Dealer Funding.

Q. The buyer is listed as Palisades Dealer Funding?

Mamdoh Eltouby

A. Yes.
Q. Who is the representative buying the car for Palisades Dealer Funding?
A. That's me.
Q. So you acted as a representative of Palisades --
A. Right.
Q. -- to buy the car?
A. Right. They give me authorize.
Q. They give you authorization to buy the cars under their name?
A. Correct.
Q. Okay. And then they keep the title after you purchase the car?
A. Yes. The fees and title and everything. And they transport her.
Q. Would they pay all of the fees?
A. They pay everything.
Q. And then, when you sell the car --
A. Then they pay off this part.
Q. You have to give them back --
A. The payoff.
Q. The payoff amount?
A. The payoff amount.

Mamdoh Eltouby

Q. The payoff amount may not necessarily be the buyer's net?

A. No.

Q. Would it be lower than the buyer's net?

A. How it gonna be lower?

Q. It's going to be higher than the buyer's net?

A. Exactly.

Q. They charge you a premium for lending you the money?

A. Correct.

Q. So the buyer's net here says what -- $15,950?

A. Yes.

Q. And these are just the costs for the auction?

A. Correct.

Q. Between Palisades and New York Motor Group or Palisades and Planet Motor Cars --

A. Yes.

Q. -- there was another agreement, but they were going to charge you additional fees that had to be paid but would only be paid after the car had been sold?

A. When the car is sold they say that they pay off which is per day, you understand? They charging interest per day. And they charging also another fee, document fee, and buyer fee and so many.

Q. So the longer the car sits in the lot of the dealership --

A. More money.

Q. -- the more money it costs when you have to pay off Palisades?

A. Right. Plus the transportation.

Q. So the cost to New York Motor Group or Planet Motor Cars is always going to be higher than the buyer's net?

A. Oh, yes. Much higher. Almost 18 percent.

Q. This was from yesterday, marked as Exhibit 3?

A. Yes.

Q. Is that an advertisement for the sale of the car in Mr. Tuhin's transaction?

A. Yes.

Mamdoh Eltouby

Q. What is the advertised sale price?

A. This is $14,995.

Q. Is that the same car as this car that was purchased --

A. Yes.

Q. -- at Manheim?

A. Yes.

Q. Why would New York Motor Group advertise the sale price of the vehicle for less than the buyer's net at the auction?

A. I say again, this is only amount of finance, it's not the price. It's amount of finance. And the customer have to be coming in with $2,000 additional to this. If you calculate as $14,995 plus $2,000, it's $17,000, which is already our, you know, our thousand dollar over the buying or less. And this is our profit, you know.

Q. So --

A. Don't forget, we sell cars and you sell time. Do you understand?

Q. Okay. So New York Motor Group never intended to sell the car for $14,995?

A. Absolutely not. Because that's

Mamdoh Eltouby

got to be stupid.

Q. It would be stupid for New York Motor Group to sell the car for $14,995?

A. Exactly. Yes.

MR. LANE: I'm going to try to move this along so Mr. Brener can get in.

Q. Let me just show you one other document from Mr. Freire. Yesterday, Mr. Keshavarz had asked you about when you discovered that there were problems with Julio Estrada at the dealership and, if I'm not mistaken, you indicated that it was about August of 2013?

A. Yes.

Q. You were talking about having seen contracts where the creditor or the seller was listed as "DLR"?

A. Mm-hmm.

MR. LANE: Let me that have this marked as the next exhibit.

(Document referencing Boris Freire and Miriam Osorio is marked as Plaintiff's Exhibit 15 for identification, as of this date.)

Q. I'm giving you Plaintiff's Exhibit 15, which is three pages front and back. Take a look at that. I'm sorry, what was that?

A. I say only the people with Odyssey. You realize this is the people is too cheap, they want to take the car for free.

Q. What did they realize was too cheap?

A. Because they coming from New Jersey, and in New Jersey this particular car is too expensive. Family car, it's very expensive in New Jersey. They try to come in in New York to take this car very, very cheap.

Q. But aren't they coming in because of the advertisement for the price of the car?

A. Yes, but they don't understand the concept. They don't understand what's the difference between New Jersey and New York. They don't understand. They just want to steal the car.

Q. Is one of the things that they're not understanding that the price on the advertisement is not the price they're going to get for the purchase price of the car?

A. We told them. We explained everything to the customer. And he -- the customer -- can walk and go and say, "You know what, I don't want the car." Instead, he do this, all the mess.

Q. Let's take a look at Exhibit 15.

A. Okay.

Q. You were mentioning yesterday that you had seen some contracts that were created -- that you assumed were created -- by Mr. Estrada, that listed DLR as the seller?

A. Yes.

Q. Is that one of those contracts?

A. This mean he's taking the money out, he pocket the money.

Q. He what?

A. He must be pocket the money.

Q. Pocketing the money?

A. Yeah.

Q. Who must be pocketing the money?

A. Julio.

Q. Julio Estrada?

Mamdoh Eltouby

A. Yes. How he give the customer? This is only the one?

Q. I'm sorry?

A. This is not such --

Q. That's a document that we turned over, a document that Mr. Freire had. We produced that in response to the dealership's demands for documents.

A. I got to see it. I don't have this here, I don't have this. I don't have it at all.

Q. No, it wasn't produced to us by the dealership.

A. So that was produced by the customer?

Q. The customer had a copy of that; it was given to him.

A. I have a question. This customer, he bought the car for how much?

Q. I'm not going to answer that question.

A. It looks like another car is stolen from me, this is stealing.

Q. So, when you were --

Mamdoh Eltouby

A. This is 100 percent stealing.

MR. SIMON: Just answer his questions.

Q. What I want to know is, is this the kind of contract that you were referring to yesterday when you said it looked like Julio Estrada had created documents that listed DLR --

A. Yes.

Q. -- as the seller?

A. Yes.

Q. And he did it to get cash from customers; is that what you think was done?

A. Yes, 100 percent.

Q. And you saw contracts like this in the summer of 2013?

A. Yes. I see these people come in with something like this, and he want his deposit back or something like this. But this is here different. The customer, he have a car; right?

Q. Yes, the customer already had the car. I will tell you that Mr. Freire already had his car. He had already purchased the car under a retail installment contract that was assigned to Santander.

A. Yeah, so how come this is not Santander?

Q. Actually, take a look at the very bottom of page one.

A. Santander would be under this contract.

Q. Who is listed as the assignee of this contract?

A. It say DLR, and it is Santander Consumer.

Q. That is listed as the assignee?

A. Yes. DLR and Santander Consumer. Santander is never funding this deal, they don't.

Q. I'm not asking about that. Here's my point: You seem very disturbed by this contract.

A. Yes.

Q. It's a disturbing contract?

A. Yes.

Q. Why is it so disturbing?

A. I don't know. This could be this

is he steal this car and they give the guy -- this is the original contract?

Q. No.

MR. SIMON: That's the retail installment contract.

Q. He already was given one retail installment contract.

A. Okay. Can I see it?

Q. You looked at it. You just looked at it before. It's Exhibit 4 -- I'm sorry, it's Exhibit 9.

MR. SIMON: It was part of 4.

Q. It's Exhibit 9.

MR. SIMON: The front page was part of 4.

A. So the guy, he signed two contract, you see this is here? This is original contract, and this is here the customer. You see here?

MR. SIMON: Look at the date on the first one.

THE WITNESS: The date on the first one? February 18, 2013.

MR. SIMON: That is the date on

the first one?
THE WITNESS: Yes. Okay. Excuse me, I have question. The customer say this have two contract?
MR. LANE: Mr. Freire had both of these contracts in his possession, yes.
THE WITNESS: I know, but does he have the two contracts?
MR. LANE: These are the two contracts that he signed at New York Motor Group.
THE WITNESS: This is a bogus. Excuse me, this is bogus.
MR. LANE: Okay.
Q. Would you be surprised to know that he signed that at New York Motor Group; that this contract was given to him at New York Motor Group?
A. You see here, not even signature for F&I.
Q. I understand.
A. You know, it must be something, something happened. I don't understand it.
Q. Let me take a look.

MR. SIMON: Can the record note that he is pointing to the second contract?

MR. LANE: To Exhibit 15.

MR. SIMON: Exhibit 15.

MR. LANE: Absolutely.

A. This is, excuse me to say, this is bogus.

Q. So you believe that Exhibit 15 shows a bogus contract?

A. One hundred percent.

Q. Again, is it true that you had seen that Julio Estrada was creating bogus contracts like Exhibit 15?

A. Yes.

Q. What did you do when you saw that he had been creating bogus contracts?

A. I never see this.

Q. I'm not asking you if you saw Exhibit 15 specifically, but you saw contracts like Exhibit 15?

A. Yes. And I explained the people, "Did you give this guy money?" They tell me, yes, they do. I tell them this is bogus.

Mamdoh Eltouby

Q. What did you do for the customer when they told you that they had given money to Julio Estrada?

A. I referred right away to the DA.

Q. Would you refund them the money?

A. No, I referred them to the DA. I never take from them money, I never take from the customer money.

Q. But didn't you feel like you had some responsibility to the customer?

A. No, because he went already to this place, to outside of my dealership.

Q. But you knew that these contracts were signed at New York Motor Group; correct?

A. I don't know if they sign in New York Motor Group or not. He tell me, "This is my business outside," or I asked him, "What is this here?" He tell me, "Don't worry about it, this is another dealer I do business with."

Q. Do you ever remember speaking to Mr. Freire?

A. Freire?

Q. Yes.

A. No, never.

Mamdoh Eltouby

Q. You don't remember speaking to him?

A. I never speak with him. He told you this, he speak with me?

MR. SIMON: Just answer the question.

Q. You keep asking me questions.

A. I'm sorry.

Q. I can't answer your questions.

A. I'm sorry, I'm sorry. I never speak with him.

Q. You never spoke with Boris Freire?

A. Never speak with him.

If he recognize here, you see how the contract is, you see here between this contract? You see here the name of the customer is here, and here the name of the dealer. You see he put here the name of the customer and "DLR." You can ask Santander if you have a dealership called DLR sign with you or not.

Q. But there's no allegation that Exhibit 15 was assigned to any bank.

A. That's bogus.

Mamdoh Eltouby

Q. That's not an allegation.
A. Bogus.
Q. Nobody thinks Exhibit 15 was assigned to a bank.
A. Bogus.
MR. SIMON: Let the record reflect that my client was comparing Exhibit 9 and Exhibit 15 during his testimony.
Q. Exhibit 9 was absolutely assigned to Santander, and that is part of the allegation -- but nobody is saying that Exhibit 15 was assigned.
I'm curious though, because you are stressing that it's bogus because the dealership's name is not listed.
A. Yeah. This is the end of this before he leaving. He starting to becoming like wild. He was robbing everybody.
Q. But if you knew that he was doing this at your dealership, did you take --
A. No.
Q. -- did you take any steps?
A. No, it's not in my dealership, because the people they come in with the

contract. I never see them in dealership, and they is not speaking English.

Q. Did Nada ever tell you that --

A. I ask her --

Q. -- Julio was providing contracts like this to people?

A. No.

Q. She never told you that?

A. She never tell me this. Because I ask her, "Do you see these people before?" And she tell me no.

Q. You asked her if she had seen Mr. Freire before?

A. No, no, no, not Freire. The people that have on the contract say "DLR."

Q. I know you probably spoke to a lot of people at your dealership.

A. Yes.

Q. But you don't think you ever spoke to Mr. Freire?

A. Absolutely not. I not even remember him.

Q. Okay.

A. I don't know if he --

Q. Did you ever ask any customers --

MR. SIMON: Let him finish his answer.

MR. LANE: He said he doesn't remember.

A. No, no, no. I want to say it also: Most of the time when I come to dealership and I see is any customer come in and a complaint or something, I take him over to the side and ask him what is the complaint about. Most of the people they not speaking English, and this is what Mr. Julio Estrada, he take advantage for the people that don't speak English and not understand.

Q. So if somebody told you that Julio Estrada promised that they could refinance their car loan after six months, and they came back to refinance it, and they had given money to Julio Estrada because he demanded money to refinance it --

A. I even asking the customer right away.

Q. Let me finish the question.

If a customer came in and told you

Mamdoh Eltouby

this, would you do anything to get them their money back?

A. Yes, absolutely.

Q. What would you do to get them their money back?

A. I would get him right away. I would tell him he take from this guy money. And then the customer, he come in, "Don't worry, don't worry about it, don't worry, I handle this with Julio." He's a con artist.

Q. Fine. But would you tell Julio to return money to people?

A. Yes. I tell him, please, I don't want these people coming to asking me.

Q. So there were instances where this occurred and Julio was still working there?

A. Yes, in the end of it.

Q. And then you said to Julio, "Give them back whatever money you took from them"?

A. The money, yes.

Q. Did you fire him on the spot?

A. I fire him in the spot.

Q. On the spot?

A. Yes.

Mamdoh Eltouby

Q. Well, how many times did this occur?

A. This is a time when end of August, I think. I tell him, listen, if you started to play the game and tell people this and this and this, I refer every one of them to the district attorney, and he going to deal with it.

Q. But did you let him continue working at New York Motor Group --

A. No.

Q. -- after August 2013?

A. No.

Q. Was he ever at the dealership after August 2013?

A. 2013?

Q. Yes.

A. August?

Q. You just said --

A. No, no, August he was there.

Q. Right. So when did you fire Julio Estrada?

A. End of November, the first day of December, end of November.

Q. When did you ever learn about a

bogus contract and then tell Julio Estrada to refund the money to the customer?

A. This is in -- about in November, November, exactly about November. I tell him, "Listen, where is these people?" He telling me, "I have the different business, this is a taxi business. I have nothing to do with you." I tell him, listen, but why the people coming to my place?

Q. That is what Estrada told you?

A. Yes.

Q. That these things were happening at another business?

A. He have another business with taxi.

Q. I just want to be clear, because yesterday you testified you discovered that Julio Estrada was doing bad things in August of 2013.

A. Yeah, this is starting, it starting to be in the end. Then I be watching and I tell my daughter any customer come in here, that she's got to be sit down and go to inside, you know.

Mamdoh Eltouby

Q. You also started audio-recording Julio Estrada's conversations --

A. Yes.

Q. -- in August?

A. Yes.

Q. So you didn't fire him in August; you just started recording the conversations?

A. Yes, I want to see --

Q. And would you listen to those recordings?

MR. SIMON: Hold on. Let him finish his answer.

MR. LANE: He said yes.

MR. SIMON: No, no, he didn't finish his answer. Finish your answer.

MR. LANE: Could you read back the last answer.

(The record is read back by the reporter.)

THE REPORTER: "QUESTION: So you didn't fire him in August; you just started recording the conversations?

"ANSWER: Yes, I want to see -- "

A. No, I answer this: I not fire him

Mamdoh Eltouby

in August.

Q. You didn't fire him in August?

A. I don't fire him in August.

Q. You started recording his conversations in August?

A. Correct.

Q. You started watching him and recording his conversations?

A. Exactly.

Q. Do you remember coming to court in August of 2013 on the Alkhatib case?

A. 2013?

Q. Yes.

A. Yes. What month?

Q. August 2013.

MR. SIMON: Which court are you referencing?

Q. Do you remember coming to Federal Court in Brooklyn --

A. In Brooklyn, yes.

Q. -- with Bruce Minsky on the Alkhatib case?

A. Yes, yes. And he was there too.

Q. Do you remember bringing Julio

Estrada with you?

A. Yes, he was there.

Q. Why did you bring Julio Estrada to court?

A. Because he tried to explain to the court what's the finance.

Q. Did Julio Estrada say anything to the court that day?

A. That was in a meeting between the court's secretary.

Q. I want to be really clear here.

A. Yes.

Q. I was there. I don't want you to tell me anything that Julio Estrada or you said directly to Magistrate Gold. I don't want to know that.

A. Okay.

Q. That was a confidential conversation as part of a negotiation, so I don't want to know that, and I'm not asking you to tell me that.

A. Okay.

Q. But why did you bring Julio Estrada to the court that day?

A. Testimony. Testament about the finance what he did. I tell him, "You see what you did to me?," you know. Then he tell me, "I go with you to court and I testimony." I don't know if this was a trial that he can come in and talk. There was no trial.
Q. So in August of 2013, you were aware that there was at least one lawsuit filed against you related to Julio Estrada?
A. Yes, regarding the financing.
Q. Did anybody tell you that you had to preserve the recordings that you were then creating?
A. No.
Q. Nobody told you to preserve the recordings that you were making?
A. No. "Preserve," this mean to?
Q. Meaning, don't erase the recordings.
A. Oh, no.
Q. Nobody told you that?
A. No.
Q. And so all of the audio recordings that you started making in August of 2013 were

erased within eight days of the recording?

A. Correct.

Q. Because that's the way the machine was programmed?

A. That's the way this is --

Q. And you didn't take any steps --

MR. SIMON: Note my objection to the form of the question.

Q. You understood that? You understood when I said it erased it within eight days, because that's the way the machine was programmed?

A. That's the way the machine programmed, yes.

Q. And you didn't take any steps to contact the manufacturer to see if you could keep the recordings from being erased?

MR. SIMON: Note my objection to the form of the question. That was asked and answered.

MR. LANE: That's not an objection. He can still answer it.

MR. SIMON: I mean you're misrepresenting, because he testified what happened to that device. I think you're misrepresenting what he said.

Q. If you don't understand my question, you will ask me to rephrase it; correct?

MR. SIMON: I just want my objection on the record.

MR. LANE: Your objection is on the record.

MS. LINDERMAYER: I don't think you pointing out inconsistencies in the testimony is appropriate.

MR. SIMON: I'm not pointing out inconsistencies in the testimony. I'm pointing out inconsistencies in what you're saying.

MR. LANE: Your objection is noted.

MR. SIMON: My objection is on the record.

Q. If you don't understand my question, you will ask me to rephrase it; right?

A. Go ahead.

Mamdoh Eltouby

Q. Okay. After you were in court in August of 2013, in federal court --

A. Yes.

Q. -- with Julio Estrada on the Alkhatib case, did you do anything after that to figure out how to prevent the recordings from being erased?

A. No.

Q. Okay, that's it. And nobody told you that you should try to keep the recordings from being erased?

A. No.

Q. Did you ever tell anybody, obviously not your employees -- or, I don't know, maybe your employees -- that you were recording Julio Estrada's conversations?

A. He know.

Q. He knows?

A. Yes.

Q. But did you tell anybody else that you were recording Estrada's conversations?

A. He knows.

Q. Did you tell anybody outside of the dealership?

A. No. Everybody see in the monitor, this is a mike next to that particular camera.

Q. Did Bruce Minsky ever visit you at the auto dealership at New York Motor Group?

A. No.

Q. He was never inside the trailer at New York Motor Group?

A. No.

Q. Did you have a tech guy who took care of the computers at New York Motor Group?

A. Take care of the computer, or the camera system?

Q. Was there somebody who maintained the camera system?

A. Yes.

Q. Who was that?

A. Was some company put in camera system. I can get it for you.

*RQ MR. LANE: We are going to leave a blank in the transcript for the name of the company that maintained the camera system and we are going to serve this written request, among others, on Mr. Simon and Mr. Minsky, and they will have you fill in the blanks to the best of your ability.

INSERT: ____

MR. LANE: Can we keep going here?

MR. GROSSMAN: Can I ask something, counsel?

MR. LANE: Off the record.

(A discussion is held off the record.)

Q. Do you know a customer named Bobby Muniz, Robert Muniz?

A. Yes, yes, I remember.

Q. Did he come back to New York Motor Group and complain about Julio Estrada to you?

A. No. He's even his friend. He's Puerto Rican, like him, and every time he come in they drinking together.

Q. Every time?

A. Yes.

Q. Did Bobby Muniz ever come in and complain to you?

A. He tell me -- every time he come, he hug him and they drink together, whatever, you understand. And then he tell me, I have to make the payment down.

Q. Were you aware that Julio Estrada was drinking during finance transactions?

A. Not really.

Q. You were not aware of that?

A. No.

Q. But did Bobby Muniz tell you that Julio Estrada was drinking during the financing transactions?

A. No. I see them, they drinking together.

Q. You saw Julio Estrada --

A. I see Julio Estrada.

Q. -- and Bobby Muniz drinking together?

A. Yes. That was the times he came, yes, I see this.

Q. When did you see that?

A. He come in one time and he want to, he have a problem with the car, he want to fix it under the warranty and -- but he adds some stuff, you know?

Q. When was this?

A. That was a long time.

Mamdoh Eltouby

Q. Was it in 2013?

A. Yes, in the beginning.

Q. It was at New York Motor Group --

A. Yes.

Q. -- that you saw Bobby Muniz drinking with Julio Estrada in Julio's office?

A. Yes, but he not drinking, drinking to make him drunk. It's like two or three shots or something.

Q. Was Angel Santiago with them?

A. No.

Q. Did you drink with Julio Estrada and Bobby Muniz?

A. I not drink alcohol, sir.

Q. After you saw that, did Bobby Muniz ever come back and talk to you alone?

A. No. He coming, time he come in always to the place --

Q. Would he come back often?

MR. SIMON: Let him finish his answer.

A. Well, he -- he always come into the place, hang out with him. Construction guy, I think --

Mamdoh Eltouby

Q. You're not answering my question.

A. Yes.

Q. I asked you did Bobby Muniz ever come back and talk to you without Julio Estrada?

A. One time he come in and he was waiting for him. He tell me, I bring somebody to co-sign me to get my interest rate lower.

Q. Lower?

A. Yes.

Q. Okay. Did he tell you that Julio promised him he could refinance?

A. He tell him, yes.

Q. Did you direct Bobby Muniz to go speak to Shawn at Hillside?

A. When he give me a lot of call, you know, I tell him, listen, if you have somebody that really have a good credit, we can do it by ourselves, we can do it through Planet Motor Cars.

Q. Through Planet Motor Cars or through Hillside?

A. No, Planet Motor Cars.

Q. Do you remember what year that

was?

A. That was all of 2013.

Q. 2013?

A. Yes.

Q. I thought Planet Motor Cars was no longer doing business in 2013?

A. Yeah, it's until July.

Q. Okay. So did you tell him to go see Shawn?

A. Yes.

Q. You told Bobby that he was to go see Shawn --

A. Yes.

Q. -- about refinancing?

A. Because he is -- you know, because he needing this, he give runaround all the time.

Q. You believed that Julio Estrada was giving him the runaround?

A. The runaround, yes.

Q. After Bobby Muniz told you this, then you told him to go to Hillside? Did you talk to --

A. Not Hillside.

Q. Oh, to go see Shawn. Did you talk to Julio Estrada about Bobby Muniz's loan?
A. He tell me he have no credit. The credit, his credit, is still bad. Because he not doing --
Q. But did you ask Julio Estrada if he promised Bobby Muniz that he could refinance back at New York Motor Group?
A. I not -- I not really remember.
Q. You don't remember if you asked Julio Estrada?
A. I don't remember.
Q. Did you ever ask Julio Estrada if he ever promised anybody that they could come back and finance at New York Motor Group?
A. He knows very good.
Q. He knows what?
A. He knows this, he not supposed to do this.
Q. He knows he's not supposed to do that?
A. Yes.
Q. But did you ever talk to him about it? Did you ever say to him --

Mamdoh Eltouby

A. In the beginning, I told him.

Q. But you have been saying that you started hearing really wild things in the summer of 2013; is that correct?

A. In August?

Q. Yes. And did you ever say to Julio Estrada, "Why are you promising people that they can come back and refinance in six months?"

A. I explain you yesterday, to Mr. Keshavarz. I tell him this is usually, you know, usually, but this is the customer after -- not six months, six months is too close. It's about eight months at least when he holding the loan and paying in time, and paying in time. Then his credit score is jumping.

Q. So you believe it's possible for people to come back after eight months and refinance a loan?

A. You don't need to come back. He can go to online -- E-Loan-dot-com, you know -- and he write his information, and the E-Loan, you see this is existing loan and paying and fine and everything. He take him with lower interest rate. You don't need to come in to us.

Q. Do you know who is running a dealership at the old location of New York Motor Group now?

A. No.

Q. On Northern Boulevard, you don't know who has the dealership?

A. I don't know who has that, no.

Q. Yesterday you testified that you left the hard drive --

A. Yes.

Q. -- that had the video and audio recordings on it with the camera system at the location of New York Motor Group?

A. Right.

Q. And you left it there because the incoming tenant was going to use it?

A. I don't know is the incoming tenant or not. I left it. It doesn't make any sense for me.

Q. Who owns the property?

A. This is some landlord, his name

is Paul. Paul -- it's the landlord, you know. Because I wasn't paying him rent, you know. What's his name? Paul? I get you the name.

*RQ MR. LANE: We will leave a blank space in the transcript for the name and the contact information of the landlord of 60-20 Northern Boulevard, where New York Motor Group was previously in operation.

INSERT: ____

INSERT:____

THE WITNESS: Can you write for me all this? Because I cannot remember.

MR. LANE: All of this is going to be followed up with formal demands to your attorneys, both Mr. Simon and Mr. Minsky.

THE WITNESS: All right.

MR. LANE: Thanks. Because we don't want there to be any confusion. We want to make it perfectly clear what we're asking for.

Q. Mr. Eltouby, have you ever been prosecuted for failure to pay taxes?

A. Prosecuted, no.
Q. Have you ever been charged by any state or federal agency for failing to pay taxes?
A. No.
MR. SIMON: Him personally?
Q. You personally.
A. No.
MR. SIMON: Note my objection to the relevancy of the question.
Q. Has Planet Motor Cars ever been charged for failure to pay taxes?
A. Planet Motor Car?
Q. Yes.
A. This is, I think it's 2001 or -- yes, or 1989 or 2000, something like this. It was not failure; this was incorrect taxes only.
MR. SIMON: Note my objection to the relevancy.
MR. LANE: I'm sorry, I have to respond. You are wondering what is the relevancy of charges against Planet Motor Cars for not remitting the proper

amount of taxes to the state of New York?

MR. SIMON: Back in 2001, he said. You said "ever" -- and this transaction that you're complaining about was 2012, 2013.

MR. LANE: I would like the record to note my laughter.

MR. SIMON: Let the record reflect my chagrin.

Q. So it's true, then, that New York has claimed that Planet Motor Cars was not paying the proper amount of taxes on the car sales?

A. New York Motor?

Q. That Planet Motor Cars was charged with --

A. Planet Motor Cars.

Q. -- was charged with not paying the proper amount of taxes on the sales?

A. Yes, proper amount on the taxes. But they corrected already.

Q. You corrected it?

A. Not me. This corrected, the

company corrected.

Q. Planet Motor Cars corrected?

A. Yes. Between the finance, the accountant and the Department of State, and was finished the problem.

Q. Do you remember the amount of money that New York State demanded from Planet Motor Cars?

A. Not really.

Q. Was it more than $500,000?

A. I don't remember.

Q. Is it true that the demand was that Planet Motor Cars was not paying the proper amount of taxes on the sales of automobiles?

A. I don't remember. If you want this, you have to get the charge record from the court or something. I don't know.

MR. SIMON: Is this referencing sales tax or income tax?

MR. LANE: I don't know.

Q. Was it sales tax or income tax?

A. I don't know.

Q. Were you arrested at that time?

Mamdoh Eltouby

A. What?
Q. Were you arrested related to this?
A. No, no, it have nothing to do with me. It's the company only.
Q. You were not personally arrested?
A. Not personally.
Q. Have you ever been arrested for a crime?
A. No.
Q. Have you ever been convicted of a crime?
A. No. Violation maybe.
Q. What violation?
A. Violation.
Q. What kind of violation?
A. Violation like, you know, not even misdemeanor.
Q. Like what? Tell me the violations you have been charged with.
MR. SIMON: Well, under the civil rights law, if he has not been convicted of a crime I am going to direct him not to answer.
MR. LANE: I would love it if you

would cite me where in the civil rights law I can't ask this question at a deposition.

MR. SIMON: You can't ask him if he has ever been arrested.

MR. LANE: I'm not hiring him; I'm asking him questions in a deposition. Can you tell me what law prevents me from asking that question in a deposition?

MR. SIMON: Yes. The New York State civil rights law.

MR. LANE: Could you tell me that law and cite it? I don't know what you're talking about. This is a deposition. I'm not a potential employer.

MR. SIMON: You're asking him if he's ever been arrested?

MR. LANE: Yes. It's a deposition.

MR. SIMON: I'm just saying that I'm not going to permit that question.

MR. LANE: He already answered it.

Mamdoh Eltouby

MR. SIMON: No further inquiry on that. I'm asserting my client's rights.

MR. LANE: Okay.

MR. SIMON: You can ask him if he has ever been convicted of a crime.

MR. LANE: I have. And he said he hasn't. But now he says that he has possibly been convicted of violations, and so I would like to know what violations he has ever been convicted of.

THE WITNESS: Like peeing in the street.

Q. Like what?

A. Peeing in the street.

Q. Have you been charged with public urination and convicted of public urination?

A. Sixty dollars, yes. I pay $60.

Q. You have been convicted of public urination?

A. Sixty dollars.

Q. When was that?

A. This is like maybe 20 years ago.

MR. SIMON: Off the record.

(A discussion is held off the record.)

Q. Are there any other violations that you have been convicted of?

A. No.

Q. When were you convicted of public urination?

MR. SIMON: He said he was arrested. We don't know if he was convicted. They may have had a plea bargain.

MR. LANE: You need to stop changing your client's testimony.

A. It's a ticket.

Q. I know. When were you ticketed?

A. I don't remember.

Q. Did you pay the fine?

A. Yes, $60, I paid.

Q. Was that in Queens County?

A. In Queens, yes.

Q. You don't remember the year?

A. No.

Q. I just want to make sure I understand. You do believe that, back in 2001,

Mamdoh Eltouby

Planet Motor Cars paid the taxes that were owed to New York State after the state charged Planet Motor Cars with failing to pay the full amount of taxes?

A. Yes. That was I think with the accountant, because it was the state and they finish.

Q. Which accountant was that; do you remember?

A. Mr. Youssef.

Q. It was Mr. Youssef?

A. Yes.

Q. Where would the money to pay the state have come from?

MR. SIMON: Note my objection to the relevancy. You can answer.

A. I don't know.

Q. You don't know?

A. No.

Q. Did you pay it personally?

A. Me personally? No.

Q. It would have come from the accounts of --

A. From the company.

Mamdoh Eltouby

Q. -- Planet Motor Cars?

A. From the company, yes.

Q. Mr. Eltouby, I believe yesterday at one point you had said that Julio Estrada was a good F&I representative?

A. Yes.

Q. Why did you think he was a good F&I representative?

A. When he sit down and do the deals, when he do the straight deals, he's very good F&I. He understand very good the finance. He structure the deal very good and explain everything to the customer, and tell the customer, "You are under the camera," you know. And "If you sign here, if you was all the knowledge and brought -- bring your driver's license, I see what it says for the customer and I want sign you exactly what's your driver's license, sign the contract."

And then the customer ask, he ask in the end of all the deal, "you are all satisfied, you are good? Tell my boss that you are good, nothing wrong." That's in the beginning.

Mamdoh Eltouby

Q. So when you hired him, you hoped that he was going to make you money?

A. I, you know, I hired him F&I, you know, and finance manager. But he is a little bit advanced, because he have an experience with banking business. He knows very good every bank, what he buying, and what is structure for the bank.

Q. Do you know if he had specific contacts at any bank?

A. No.

Q. So when you hired him, is it true that you hoped that he was going to be able to make --

A. To be good.

Q. -- to close deals and make money for the dealership; is that true?

A. And make money for himself. He come in crying for me he have seven kids.

Q. But you hoped that he was going to make money for the dealership as well; is that correct?

A. Yes.

Q. Looking back now, is there

Mamdoh Eltouby

anything you would have done differently --

MR. SIMON: Note my objection.

Q. -- in terms of hiring Julio Estrada and allowing him to work at New York Motor Group?

MR. SIMON: Note my objection to the form of the question. You can answer.

Q. If you understand the question, you can answer: Is there anything you would have done differently?

A. I don't understand.

Q. You don't think so?

A. I don't understand what you say.

Q. Now looking back to the end of 2012, when you hired Julio Estrada, as you think about it now here today would you do it differently if you could?

A. Sure.

Q. Would you still hire Julio Estrada today?

A. Absolutely not.

Q. So you feel like you probably should not have hired Julio Estrada?

Mamdoh Eltouby

MR. SIMON: Objection to the leading nature of the question.

A. I don't know this.

Q. Do you feel that you should have hired Julio Estrada now?

MR. LANE: Asked and answered.

A. No.

Q. Do you feel that you should not have hired him?

MR. SIMON: I'm directing him not to answer. You're asking him to speculate on what he should have done. Why don't you ask him what he did? He did answer your question. I just want to move forward.

MR. LANE: It's pretty clear that -- let me just rephrase the question.

Q. So that it's perfectly clear, correct me if I'm wrong, but I think what I'm hearing you say is that you would not have hired Julio Estrada today?

A. Yes.

Q. Today --

Mamdoh Eltouby

A. Yes.

Q. -- today, you would not hire Julio Estrada, knowing --

A. Absolutely not.

Q. -- what you know now?

A. Absolutely not.

Q. And looking back at December of 2012, you feel like you should not have hired Julio Estrada at that time?

A. Yeah, I feel this is -- you know I trust him, whatever he tell me, and I know very good he have a problem. When you are in the probation, if you make a small mistake then you go to jail, you know. I don't believe that the guy going to be suicide himself like this, and he have seven kids in the street, you know, so going to take care of the kids when he is in jail, you know? This is common sense. I never thinking he's going to do this, never.

Q. Okay. You knew he was on probation and you thought that if he was on probation, it would keep him honest?

A. Exactly. He have to be straight, more than straight, because if he do anything,

Mamdoh Eltouby

he going to be put in jail right away.

MR. LANE: All right. I'm going to go off the record for a second.

(A discussion is held off the record.)

oOo

MR. LANE: I'm going to pass the witness to Ms. Lindermayer.

THE WITNESS: Lindermayer?

MS. LINDERMAYER: Yes.

THE WITNESS: She's the lawyer for which case?

MS. LINDERMAYER: I'll introduce myself.

EXAMINATION BY MS. LINDERMAYER:

Q. Mr. Eltouby, I'm Ariana Lindermayer. I'm one of Shahadat Tuhin's attorneys.

You testified earlier that a lot of customers started complaining by August of 2013. When was the first time that you heard about a customer complaining about Julio Estrada?

A. The first customer is Alkhatib.

Q. When was that?

A. This is in 2013.

Q. Which month?

A. August.

Q. You had testified that you contacted him about this problem before he filed a lawsuit?

A. Yes, I did.

Q. That lawsuit was filed around April of 2013, so if you had contacted him before then --

A. Yes.

Q. That would have been in the spring of 2013 that you contacted him?

A. Yes, I contacted him. And the only problem in this time, you know, from Julio -- and this is the reason I tell him, listen, this is not the way this work. Let them know. I go with you to the court, and testimony I never tell the guy anything wrong.

Q. Just to clarify: Are you saying that you knew about this first complaint in spring of 2013?

A. Yes.
Q. Before April of 2013, when the lawsuit was filed?
A. Yes.
Q. But you didn't fire --
A. Oh, hold on a second, wait a second, going too fast. So before the lawsuit filed?
Q. That's what you testified to earlier today. You testified under oath that you contacted Mr. Alkhatib about his complaint before he filed the lawsuit.
A. I know. But when he complained, he was calling the company and complain. We tell him if he don't like the deal, come over, we give you all of your money and --
Q. I'm just asking --
MR. SIMON: Let him finish.
MS. LINDERMAYER: He's not answering my question.
Q. I'm just asking you about the time frame. I'm not asking you about what you discussed with him.
MR. SIMON: You're asking him

Mamdoh Eltouby

about his conversation.

MS. LINDERMAYER: No, I'm not -- I'm just asking about the time frame.

Q. I just want to know when you first learned that Mr. Alkhatib had a complaint about Julio Estrada.

A. I don't remember.

Q. You testified earlier that it was before he filed a lawsuit.

A. Yes. But I don't know what is the time frame.

Q. Well, I'm telling you the lawsuit was filed around April of 2013.

A. Okay.

Q. So that was the first complaint that you received?

A. Yes.

Q. For the consumers who complained, did you ever buy back the loan from the lender?

A. Yes.

Q. For which consumers?

A. I don't remember exactly, but a couple of them. One of them is a Pennsylvania customer. He see also with the loan, he don't like it, and he call me from over there and I tell him, "No problem." This is after he take the car one week -- not one month. I tell him, okay, come over, I void the deal with M&T Bank, I send a check, and I pay off the deal. I take the car from him, the car, and then we finish.

Q. Do you remember that customer's name?

A. I can get you the customer name exactly.

*RQ MS. LINDERMAYER: We will leave a blank for that customer's name.

INSERT: ____

THE WITNESS: I can ask him.

Q. Any other customers from whom you purchased back the loan from the lender?

A. Yes. Another lady also in Long Island for a Nissan Ultima.

Q. Which lender was that?

A. It was also M&T. And they can also ask Jim Erickson about this loan. I tell him flat cancellation, and I did flat cancellation, and I void it.

Q. Did you inform M&T at the time --

A. Yes.

Q. -- that you were canceling it because of fraud?

A. No, no.

Q. Or because --

A. Because --

MS. LINDERMAYER: Let me just finish the question. I'll rephrase it.

Q. Why did you explain to M&T that you were repurchasing this loan?

A. Because the customer also did not like the, you know, the way for the financing. He don't like the number. Sometimes a customer wake up after one week, after two weeks, after one month, after two months. But when they wake up late, we cannot do anything.

Q. I think you have testified before that you knew that Julio Estrada was defrauding people; correct?

A. He's not frauding people.

Q. Didn't you say that you started receiving a lot of complaints from consumers that Julio Estrada was defrauding them and --

A. I never say "defrauding."

Mamdoh Eltouby

Q. That he was lying to them?

A. I never see this. You put something in my mouth now.

Q. Okay, well, I thought that you testified earlier that --

A. This is my --

Q. Let me finish my question.

I thought you were testifying earlier that by August 2013, you understood that Julio Estrada was lying to some of your customers, and then that's why you started out recording him?

A. This is the DLR. Do you see this here?

Q. I'm not asking about that, Mr. Eltouby. I'm just asking whether by August 2013 you understood, or do you understand now, that Julio Estrada lied to some of your customers about the financing terms?

MR. SIMON: Note my objection to the form of the question.

A. Which customers?

Q. As we sit here now, do you believe that Julio Estrada lied to any of your

customers at any time?
A. He is not lying to my customers. Lying to customers outside.
Q. It's a yes or no question, Mr. Eltouby. In acting as F&I for New York Motor Group, do you believe today that Julio Estrada lied to any of your customers?
A. Yes, sure.
Q. Did you ever purchase back loans from customers who claimed that Mr. Estrada lied to them?
A. I did say yes.
Q. Did you tell the lender that there was a -- you said that they did not like the loan?
A. They don't like the loan, but I never say that's fraud.
Q. Mr. Tuhin purchased the loan on June 22, 2013?
MR. SIMON: You mean, the vehicle?
MS. LINDERMAYER: Yes, the vehicle, thank you.
Q. Did your daughter tell you that he returned two days later, on June 24th, and

spoke to her about returning the vehicle?

A. No.

Q. Do you have access to the deal files for the customers at New York Motor Group?

A. Yes.

Q. Do you ever review them?

A. Yes.

Q. What do you review them for? What are some of the things that you would be looking for?

A. I see if everything is correct.

Q. Do you ever review the credit application, the loan application that is submitted through DealerTrack?

A. Yes.

Q. Did you ever view Shahadat Tuhin's deal file?

A. Yes.

MS. LINDERMAYER: I would like to have this marked as Exhibit 16.

(Document is marked as Plaintiff's Exhibit 16 for identification, as of this date.)

Mamdoh Eltouby

Q. I'm going to show you Exhibit 16, which is an application that Mr. Tuhin filled out at your dealership, which was produced to us by your attorney. Do you recognize that document?

A. Okay.

Q. Do you recognize that document?

A. Yes, application.

Q. An application; and which dealership does it list there?

A. New York Motor Group.

Q. Have you ever seen this particular application before?

A. Usually I look for the application in the DealerTrack.

Q. So then what is that application? What does New York Motor Group use it for?

A. This is, he wrote the application here to submit it to the DealerTrack. This is, all of this here is in DealerTrack, that he can run in his credit.

Q. Does that particular document, that handwritten application, go into the deal file?

A. Probably, yes.

Q. Can you just read to me what it lists there for the salary of Mr. Tuhin?

A. It's $25,000.

Q. What does it list as his job title or his job position?

A. Driver.

MS. LINDERMAYER: I would like to have this marked please as Exhibit 17.

(Document with the letterhead of DealerTrack, referencing Shahadat Tuhin, is marked as Plaintiff's Exhibit 17 for identification, as of this date.)

(A discussion is held off the record.)

Q. Mr. Eltouby, can you explain to me what this document marked as Exhibit 17 is?

A. Okay.

Q. Can you please explain to me what that document is?

A. This is application for DealerTrack.

Q. For which customer?

A. Tuhin.

Q. Have you seen that application before?

A. Yes.

Q. For Mr. Tuhin specifically?

A. Yes.

Q. Did you see it in the deal file?

A. Yes.

Q. Was it the same deal file that held that handwritten application?

A. I believe so. I don't take everything specific.

Q. I just want to know --

A. Just only if the bank call and ask and say something different, then I'm starting --

Q. Mr. Eltouby, that's not a question that I'm asking you right now. What I'm asking you is if you have ever seen that application.

A. No.

Q. If you don't know, you can say that.

A. Not really, no.

Q. Do you recall ever seeing

Mamdoh Eltouby

Mr. Tuhin's application?

A. No, I don't see it exactly.

Q. But you testified earlier that you did look at his deal file.

A. I looked at the deal file, but I don't looking for every specific paper.

Q. Can you read what his salary is listed on that DealerTrack application?

A. It's $6,500.

Q. And that is per how often? Is that his salary per year, per month, per week?

A. I don't know, it's not marked. Oh, monthly.

Q. And what is his job position listed as?

A. What's this? Dis --

Q. Dispatcher?

A. Dispatcher, yes.

Q. So is the information in the DealerTrack application different than the information in the handwritten application marked as Exhibit 16?

A. What is --

Q. I'm just asking you, yes or no, if

Mamdoh Eltouby

the information is different?

MR. SIMON: Note my objection to the form of the question. I think the document speaks for itself.

Q. Do you agree that the information in Exhibit 17 is different than the information in Exhibit 16?

A. Yes.

Q. And you had access to both of those documents?

A. Not really. If they have a problem only.

Q. But did you have access to them?

A. If they have a problem, I go and look specific.

Q. So you don't routinely review deal files to make sure that all of the information is consistent?

A. No. I looking for the contract, you know, and the funding is correct, and the downpayment is correct, you know. This is my part.

Q. Did you in your capacity as owner of New York Motor Group routinely review deal

Mamdoh Eltouby

files to make sure that the salary information being provided on the applications was consistent with the salary application that was given to you by the consumer?

A. Usually --

Q. It's a yes or no question. Did you routinely do that?

A. No.

Q. Did any of the lenders ever reject any applications because the numbers seemed suspicious or they suspected fraud? Do you remember that ever happening?

A. I don't know, because I'm not F&I. I'm not the finance manager.

Q. So if a lender rejected an application because it was fraudulent, you don't think that you would have known that?

A. This is, we never had fraudulent.

Q. I'm sorry, are you saying that this never happened?

MR. SIMON: Note my objection to the form of the question.

A. Never --

MR. SIMON: Hold it.

MS. LINDERMAYER: Richard, you noted your objection.

MR. SIMON: You're saying, did a lender reject an application?

MS. LINDERMAYER: I'm having this conversation with the witness.

MR. SIMON: No. It's a question, it's not a conversation.

Q. Mr. Eltouby, do you understand my question?

MR. SIMON: I'm directing him not to answer.

MR. LANE: Specifically on what grounds?

MR. SIMON: The issue, you said they rejected. You mean, after the transaction?

MS. LINDERMAYER: That's not a grounds.

MR. LANE: That's objection to form.

Q. Mr. Eltouby, do you understand that if I'm asking a question and you don't understand what I'm saying, that you should let

me know that, so I can rephrase it in a better way?
A. Okay.
Q. In your time as owner of New York Motor Group, did a lender ever reject an application because of fraud?
A. No.
Q. No, it never happened?
A. Because we never do a fraud.
Q. So a lender never rejected an application because of fraud?
A. We don't have a fraud. We never submitted anything to a bank, fraud.
Q. Okay. Do you recall the protest that was organized outside of New York Motor Group? I believe there were two protests. Do you recall this?
MR. SIMON: He already said this. It was asked and answered yesterday.
A. I was not there --
Q. Did you testify yesterday --
A. -- first time.
Q. Were you at the second protest?
A. Second time, I called the guy and

Mamdoh Eltouby

I tell him, what's the problem.

Q. I'm going to get there, but I just want you to answer the question that I have asked. Did you arrive at New York Motor Group after the second protest began?

A. I believe yes.

Q. Did you drive past the protesters in your car?

A. No. I come in from the one-way street. The street is one-way.

Q. Were the protesters near the entrance of the dealership lot when you pulled into it?

A. No, it was in front of the dealership.

Q. Did you try to run over the protesters with your car?

A. Are you kidding me? Are you serious?

Q. Yes, I'm serious.

A. I'm not stupid like this.

Q. I'm just asking whether you did that.

A. You're insulting me right now.

Mamdoh Eltouby

Q. I'm just asking you a question.
A. No, you're insulting my intelligence.
Q. Well, I'm sorry you feel that way, but I'm allowed to ask these questions and you're required to answer them.
A. I'm not street guy to do this.
Q. So is the answer --
MR. SIMON: Just answer the question.
A. No.
Q. Do you have a temper, Mr. Eltouby?
A. No, but you're already asking me something insulting my intelligence.
Q. Okay. I'm asking you a question now --
A. I'm engineering degree, like you have a degree.
MR. SIMON: Just answer the question.
Q. I ask the questions here and you answer them. Do you have a temper, Mr. Eltouby?
A. You're insulting me right now.

Mamdoh Eltouby

Q. I'm just asking.

MR. SIMON: I object to the form of the question and the relevancy of asking him if he has a temper.

MS. LINDERMAYER: Okay. We have a claim against your client for battery, and so this is very relevant to that claim.

MR. SIMON: Don't answer that question. If he has a temper or not, that's ridiculous.

MS. LINDERMAYER: What are the grounds for that objection?

MR. SIMON: Because I think it's a stupid question.

MS. LINDERMAYER: Well, that is not a legally viable objection.

MR. SIMON: Put down stupidity. Insofar as the question is concerned.

MS. LINDERMAYER: Thank, you, Richard.

Q. Did you ever direct your employee to spray water on the protesters?

A. No.

Mamdoh Eltouby

Q. Julio Estrada told us that he was there and you directed Juan to spray water on the protesters when he was watering the cars.

MR. SIMON: Objection to the form of the question.

A. Lying.

Q. Was your daughter at the protests? Do you remember her being there?

A. No, she's inside the office.

Q. But she was there on the days of both protests?

A. She's there.

Q. What was Nada's title?

A. She's already making paperwork, DMV, you know.

Q. What was her title, though?

A. Hmm?

Q. What was her title?

A. She's secretary and doing everything.

Q. Who was in charge when you were not there?

A. In charge?

Q. Yes. Who was in charge? Who

would people report to if you weren't there?

A. She call me and tell me.

Q. Would people report to Nada if you weren't there?

A. She called me and tell me, "Dad, this is the problem, this and this."

Q. So if you were not there, the people would report to Nada?

A. Yes.

Q. And she supervised them?

A. She not supervise.

Q. Last question.

There were a lot of dealerships on Northern Boulevard. How were you able to compete with them; I mean, what sort of practices did you use to have customers come to your dealership instead of the many other dealerships on Northern Boulevard?

A. I don't know how to answer this question.

Q. For example, did you advertise cars low, so that consumers would find your dealership attractive?

A. No, I advertised like everybody

used to, everybody advertise the same.

Q. But you testified earlier that you never intended to sell the cars at the price they were advertised; right?

A. No, I never said this.

Q. You didn't say that? Okay.

MR. SIMON: She was asking the question what makes your dealership special.

MS. LINDERMAYER: It's all right, Richard, I don't need an interpreter, thank you.

MR. SIMON: You're not giving him a chance to answer the question.

MS. LINDERMAYER: Would you please read that back?

(The record is read back by the reporter.)

MS. LINDERMAYER: We'll let that go.

MR. BRENER: Can we take fifteen minutes?

MR. LANE: Off the record.

(A recess is taken from 1:35 P.M.

until 2:00 P.M.)

oOo

EXAMINATION BY MR. BRENER:

Q. Good afternoon, Mr. Eltouby.
A. Good afternoon.
Q. My name is Robert Brener. I represent Santander Consumer.
A. Yes.
Q. We've met before; right?
A. Yes.
Q. I just have some questions for you. I will try not to repeat the questions that have been asked. There may be a few background questions that might have been asked before, but indulge me, and I will move on to the important stuff.
A. Okay.
Q. Just a couple of background questions with respect to Planet Motor Cars.
A. Yes.
Q. When was Planet Motor Cars first established?
A. 1998.
Q. And it ceased doing business at

what point?

A. As a dealer, car dealer.

Q. And continued to do business today?

A. No.

Q. When did it cease doing business?

A. I think, 2013.

Q. Planet Motor Cars Inc., had an address of 160-14 Hillside Avenue, Jamaica; correct?

A. Correct.

Q. It was a car dealership and it sold cars?

A. Yes. Sell cars.

Q. Planet Auto Group --

A. Yes.

Q. Planet Auto Group has an address of 434 East Jericho Turnpike in Huntington Station, New York?

A. Correct.

Q. When was Planet Auto Group Inc., created?

A. 2005.

Q. What was the purpose of creating

Planet Auto Group Inc.?

A. This is a different identity, you know, this is on Long Island. It's about 30 miles away from the other dealership.

Q. Is it a car dealership as well?

A. Yes, car dealership, sell cars.

Q. Is it still in business?

A. Yes.

Q. And it continues to sell cars today?

A. Yes.

Q. Did Planet Auto Group Inc., have any ownership interest in Planet Motor Cars?

A. Not really, no.

Q. Was there any business relationship between the two -- Planet Auto Group and Planet Motor Cars?

A. It's two different identities.

Q. Two separate identities?

A. Correct.

Q. One did not own the other; is that correct?

A. Correct.

Q. One was not a division of the

other?

A. Correct.

Q. One was not an affiliate of the other?

A. Correct.

Q. Did it overlap in any way with respect to employees?

A. No, no, there's no similar.

Q. Do they have similar owners?

A. Similar owners, yes.

Q. Who is the owner of Planet Auto Group Inc.?

A. Mamdoh Eltouby.

Q. You?

A. Yes.

Q. One hundred percent?

A. No. This is Mona Eltouby.

Q. Mona?

A. Yes.

Q. What is the relationship?

A. Sister.

Q. Your sister?

A. Mm-hmm.

Q. How much ownership interest does

she have in Planet Auto Group Inc.?
A. About 25.
Q. And the rest is yours?
A. Mm-hmm.
Q. When Planet Motor Cars was in existence, who was the owner of Planet Motor Cars?
A. Mohamed Masaud. M-A-S-A-U-D.
Q. You're not related to him?
A. No, we're friends.
Q. Did you have any ownership interest in Planet Motor Cars --
A. No.
Q. -- at any time?
A. No.
Q. Did anybody else have any ownership interest in Planet Motor Cars, other than him?
A. No.
Q. You were employed by Planet Motor Cars?
A. Correct.
Q. In what capacity? What was your position?

Mamdoh Eltouby

A. Position? Manager.

Q. Was that your title, or did you have another title?

A. Yeah, manager.

Q. At Planet Auto Group, did you have a title?

A. Yes. Owner.

Q. Owner?

A. Yes.

Q. Any other title at Planet Auto Group?

A. No.

Q. At Planet Motor Cars, were you an officer?

A. No.

Q. There was testimony before about signing as "president" --

A. Yes.

Q. Let me just finish. I just want to make sure that the testimony is clear.

Was that testimony concerning Hillside Motors, or was it regarding Planet Motor Cars?

A. No, it was regarding Hillside

Motors.

Q. So you were not an officer of Planet Motor Cars?

A. No.

Q. You didn't hold the title of president at Planet Motor Cars?

A. No.

Q. Did you sign documents on behalf of Planet Motor Cars?

A. No. This is signed because I used to have a power of attorney from the owner.

Q. To sign on behalf of Planet Motor Cars?

A. Yes.

Q. Was that through the course of the existence of Planet Motor Cars?

A. Yes. Those by attorney, by lawyer. His name is Isaac. In Brooklyn, in Court Street.

Q. So during the course of Planet Motor Car's existence, you had power of attorney to sign on behalf of Planet Motor Cars?

A. Correct.

Mamdoh Eltouby

Q. And that power of attorney was in writing? Was that a document in writing?

A. Yes. It was in -- by lawyer, it was did by lawyer, happen in lawyer's office.

Q. Aside from the lawyer involvement, the owner of Planet Motor Cars understood that you could sign on behalf of Planet Motor Cars?

A. Correct.

Q. Is Planet Auto Group a dealership or is it an owner/dealership?

A. No, it's dealership.

Q. And the dealership is called Planet Auto Group?

A. Correct. This is -- the number for the address, I not remember. You say 424 or 338?

Q. For which entity?

A. This is for Planet Auto Group.

Q. Well, you tell me what the address is.

A. It's 338, not 424. Used to be 424. It's the same.

Q. Just say the full address.

A. Same everything. 338 East Jericho

Turnpike, Huntington, New York 11746.

Q. Planet Auto Group is in good standing with New York State and it has all the proper licenses with New York State?

A. Yes, everything is okay.

Q. If you can briefly describe your job responsibilities. If you did this before, I apologize. Just briefly, what were your job responsibilities at Planet Motor Cars as manager?

A. Manager, yes.

Q. What were your responsibilities?

A. Buying cars. See everything was running correctly, you know. Supervise all the people who are working.

Q. Was the owner onsite at Planet Motor Cars or was he often not onsite?

A. Inside?

Q. Onsite, on the location, at the dealership?

A. No.

Q. So when he was not at the location, were you the guy in charge?

A. Yes.

Mamdoh Eltouby

Q. You testified before that Planet Motor Cars had a business relationship with Santander Consumer; is that correct?

A. Correct.

Q. Was there an agreement executed between Santander Consumer and Planet Motor Cars with respect to retail contracts?

A. That was a grandfather, you know. He have agreement with City Financial and City Financial was bought. Santander bought it, and then we come in automatic as a customer with Santander.

Q. So Planet Motor Cars had a business relationship with City Financial --

A. Correct.

Q. -- in which City Financial would purchase retail contracts?

A. Yes. City Financial was, you know, bought from Santander.

Q. But prior to Santander purchasing City Financial, Planet Motor Cars had a relationship with City Financial --

A. Yes.

Q. -- in which City Financial from

time to time would purchase retail contracts; is that correct?

A. Yes.

Q. And then when Santander purchased City Financial, the relationship continued?

A. Automatic, yes.

Q. But you did sign an agreement between Santander and Planet Auto Group at some point -- a dealer agreement -- is that correct?

A. I'm not remember. This is Planet Motor Cars.

Q. Did I say that incorrectly? Did I say Planet Auto Group?

A. Yes.

Q. I'm sorry. Planet Motor Cars.

A. Correct.

Q. Do you recall when Santander acquired City Financial? Do you recall that year?

A. Again?

Q. Do you recall what year the relationship with Planet Motor Cars went from being City Financial to Santander?

A. That was a long time. I don't

remember. But when Santander was coming in the market was ten years ago, maybe. Maybe ten, maybe more than ten years ago.
Q. Did Planet Auto Group ever have a relationship or does it have a relationship with Santander?
A. Yes.
Q. Planet Auto Group?
A. Mm-hmm.
Q. Is there a dealer agreement between Planet Auto Group and Santander?
A. It's the same exactly. That was also, this is grandfather, same thing.
Q. And it continues to this day?
A. I don't think so this is we have Santander anymore -- no, we don't have.
Q. Do you recall when the relationship with Santander and Planet Auto Group ceased?
A. Yeah, because we was not give enough contract.
Q. Is that why the relationship ended?
A. Yes, yes.

Mamdoh Eltouby

Q. Because Planet Auto Group did not have a sufficient number of contracts for Santander?

A. Correct.

Q. And as a result of having fewer and fewer retail contracts to sell, Santander was not interested in continuing business any longer?

A. Correct.

Q. And do you recall when that happened?

A. It was last year sometime or two years ago. I think two years ago.

Q. Did New York Motors ever have a relationship with Santander in which Santander would purchase retail contracts?

A. No.

Q. At any time?

A. No.

Q. How about Hillside?

A. No.

Q. Has there ever been a relationship with Santander and Hillside in which Santander would purchase retail contracts?

Mamdoh Eltouby

A. No, I don't think so.

Q. The relationship that Santander had with Planet Motor Cars and Planet Auto Group to purchase retail contracts; was that automatic? Was every retail contract purchased by Santander, or was it something less than automatic? Let me know if you don't understand. Do you understand what I was asking?

A. No.

Q. Was every retail installment contract at Planet Motor Cars assigned to Santander, every last one?

A. Yeah, every one. We have -- when we get, you know, approved, we send the contract and we go.

Q. Were there any other contracts assigned to other entities other than Santander?

A. Oh, yes. Capital One and M&T Bank.

Q. When did Planet Motor Cars first assign contracts to M&T Bank?

A. When?

Mamdoh Eltouby

Q. When did the relationship begin?

A. I think it is sometime in 2001, 2002, 2003.

Q. How about with respect to Capital One?

A. Capital One, same thing.

Q. Do you still do business with Capital One?

A. No.

Q. Do you still do business with M&T?

A. No.

Q. Do you recall if Planet Motor Cars executed dealer agreements with M&T Bank and/or Capital One?

A. Yes, you know, because the lawsuits.

Q. I'm sorry, say that again?

A. Because the lawsuits.

Q. What does that mean; "because the lawsuits"?

A. Because the problem with the lawsuits.

Q. I'm asking if there were dealer agreements between Planet Motor Cars and M&T

Bank, and Planet Motor Cars and Capital One, in which there was an agreement with respect to retail contracts?

A. Yes.

Q. So contracts existed --

A. Yes.

Q. -- between those entities --

A. Yes.

Q. -- and Planet Motors?

A. Yes.

Q. Did you sign those contracts; do you recall?

A. I believe, yes.

Q. And you signed on behalf of Planet Motor Cars?

A. Yes.

MR. BRENER: Let's me show you a document. We can mark this as whatever is the next exhibit.

(Document with letterhead of Santander Consumer is marked as Defendant's Exhibit A for identification, as of this date.)

Q. Mr. Eltouby, I'm going to show you

what has been marked as Defendant's Exhibit A. Can you take a look at that?
A. Yes.
Q. Have you seen that document before?
A. I never see it before.
Q. You have?
A. Never see it before.
Q. Never seen it before, okay. Well, the first four pages of this exhibit are signature cards or forms. Do you see those?
A. Yes.
Q. And then the fifth page says "Santander Consumer" up top. Do you see that?
A. Mm-hmm.
Q. And it says "Non-Recourse Dealer Retail Agreement." Do you see that?
A. Mm-hmm.
Q. You have not seen this document before?
A. No. The signature is not my signature. That's my son's signature.
Q. Hold on one second, let me just ask questions. Before, when we were discussing

Mamdoh Eltouby

the relationship with Santander and Planet Motor Cars, we talked about a dealer agreement.

A. Mm-hmm.

Q. Looking at this document, is that what you were referring to -- a dealer agreement? Forget what the substance of it is, but is that the dealer agreement that you were referring to?

A. Yes, it's the dealer agreement, yes. It say here "Dealer Agreement."

Q. But are you aware that there was a dealer agreement executed between Santander and Planet Motor Cars?

A. Correct.

Q. What is your understanding, generally speaking, of what the dealer agreement is for?

A. [No response.]

Q. Let me ask it more specifically: Are you aware that the dealer agreement sets forth certain rights and obligations on the part of Santander and on the part of Planet Motor Cars?

A. Yes. Part of Santander, and part

of New York Motor Cars.

Q. Okay. But the dealer agreement contains certain rights and obligations on behalf of the parties; is that your understanding?

A. Okay.

Q. Is that "Yes" or "No"?

A. Having both parties?

Q. Both parties have rights --

A. Agreement, yes.

Q. -- and obligations under the agreement?

A. Correct.

Q. Have you ever looked at a dealer agreement before? Putting aside Defendant's Exhibit A, have you ever reviewed a dealer agreement in the past?

A. I never see this agreement.

Q. Not this particular agreement; any dealer agreement?

A. Yes.

Q. You've looked at them in the past?

A. I always give it to my lawyer.

Q. But have you ever reviewed a

dealer agreement yourself?

A. By myself, no.

Q. Are you aware, generally speaking, of any of the duties and responsibilities of a dealer in connection with a dealer agreement?

A. Not really.

Q. Do you have any general idea of any obligations on the part of a dealer in connection with a dealer agreement?

A. Yes.

Q. What is your general understanding of a dealer's obligations?

A. Dealer obligation is, if anything violated the agreement, this is going to be bought back from the dealer.

Q. Repurchased?

A. Yes.

Q. So is it fair to say that if there is some problem with the contract -- if the contract was procured by fraud, or if there were documents missing, or if a title wasn't obtained, a whole number of things -- that in those instances, it's the dealer's obligation to repurchase the contract?

Mamdoh Eltouby

A. Correct.

Q. From the lending company?

A. Correct.

Q. And the lending company has a right to make a demand on the dealer to repurchase?

A. Correct.

Q. Has that ever happened; in which a lender has made a demand on Planet Motor Cars to repurchase?

A. Not really. Never.

Q. Never happened?

A. Never happened. We do this before they come to the bank.

Q. Before?

A. Before they come into the bank. We see the, you know -- you know very good the bank is bread and butter for us. We don't want any problem with the bank, and we buying the car back. We taking the car back from the customer and, you know, give it to the next customer.

Q. In your experience at Planet Motor Cars, you don't recall an instance in which a

Mamdoh Eltouby

lender has required the dealer to repurchase the retail contract?

A. Never happen.

Q. How about at Planet Auto Group; has that ever happened?

A. Never happen.

Q. It never happened where a lender said to Planet Auto Group, "Repurchase the contract"?

A. No. It never happen. But he say sometimes it was a freeze, because it was a title that was delayed, lost, and we cannot provide for Santander the lien, then they put us as a freeze until we get a duplicate title and the register. Then it's done.

Q. Just so you understand, my questions were not just limited to Santander, but to any lender --

A. Yes.

Q. -- making a demand?

A. Correct.

Q. So your answer stands: That no lender has ever made a repurchase demand?

A. No.

Mamdoh Eltouby

Q. How about at Hillside; has that ever happened?

A. I don't know about Hillside.

Q. How about at New York Motors?

A. New York Motors, no, never happened.

Q. So in your experience at the dealerships that you have either owned or worked at, a lender has never had a repurchase demand?

A. Never.

Q. Can we take a look at Defendant's Exhibit A, which you have in front of you. Look at the first page over on the right.

A. Mm-hmm.

Q. Is that your signature in the right top box?

A. No.

Q. Whose signature is that?

A. I think, my son.

Q. Underneath it, is that your name?

A. My name, but it is not my signature.

Q. I want to make sure we're looking

at the same thing. We're looking at the upper right-hand box?
A. Mm-hmm.
Q. You look like you're looking below.
A. [Indicating.]
Q. Okay, we're on the same part of the page. That's your name, but your son's signature?
A. Correct.
Q. And underneath it it says president -- or "pres," I should say.
A. Mm-hmm.
Q. Is that referring to you?
A. This is not either my signature.
Q. That's not your handwriting?
A. No.
Q. Well, it's not your signature, but is that your handwriting?
A. No.
Q. Do you know who wrote this out?
A. My son.
Q. Your son wrote it?
A. Mm-hmm. I know his handwriting.

Mamdoh Eltouby

Q. If you know, why would your son write your name as opposed to his name?

A. He write his name first.

Q. His signature first?

A. No.

Q. I'm looking at the box again.

A. The box again?

Q. Yes. Let's go back for a second. That's your son's signature in that box on the right-hand side of Defendant's Exhibit A?

A. Yes.

Q. Underneath that, is your name written?

A. Yes.

Q. Did you write that?

A. No.

Q. That's not your handwriting?

A. No.

Q. That's your son's?

A. My son's.

Q. If you know, why would your son write your name and sign his name?

A. I have no idea.

Q. What was his role at Planet Motor

Cars?

A. He is enroll, yes.

Q. What was his role? What was his role or responsibilities at Planet Motor Cars?

A. He was in the company.

Q. In what capacity?

A. He's working and sign paper.

Q. Is he an F&I guy?

A. He's an F&I guy and he is also part owner.

Q. Of Planet Motor Cars?

A. Correct.

Q. Was he authorized to sign on behalf of Planet Motor Cars?

A. Yes.

Q. What is the basis for your understanding that he could sign?

A. I don't know his basis.

Q. He did sign on behalf of Planet Motor Cars?

A. He did sign, yes.

Q. Besides this contract, did he sign others?

A. Could be he sign others too.

Mamdoh Eltouby

Q. Was he ever president of Planet Motor Cars?

A. Yeah. He's -- sometimes he put himself as president, sometimes he put himself as a worker, you know. He signed. He was running, he was running the place.

Q. But the question I have -- if you know, again -- is why your name is on it and not his name, if he was sometimes the president?

A. That's what he did. He decided to write it.

Q. Were you ever held out as president of Planet Motor Cars?

A. No.

Q. You were not held out to the public as president?

A. No.

Q. Internally, were you referred to as president or considered the president of Planet Motor Cars?

A. No.

Q. If you look in the middle, where it says "Non-Recourse Signature Card," do you see that in the middle?

A. Mm-hmm.

Q. It says "I," and then your name is there?

A. Mm-hmm.

Q. "Secretary of Planet Motor Cars"; do you see that? Were you ever the secretary of Planet Motor Cars?

A. This one here?

Q. Same thing, yes. That is your name; right?

A. Yes.

Q. Mamdoh Eltouby?

A. That's right.

Q. "Secretary of Planet Motor Cars hereby certify the following resolution was unanimously adopted." Do you see that?

A. Yes.

Q. Is that your handwriting?

A. No.

Q. Whose handwriting is that?

A. My son.

Q. Were you ever the secretary of Planet Motor Cars?

Mamdoh Eltouby

A. No.

Q. Do you know why he referred to you as "secretary" of Planet Motor Cars?

A. I don't know.

Q. Were you ever held out as secretary to the public, or internally?

A. No. I was not even there.

Q. At Planet Motor Cars?

A. When this happened here, I wasn't even there. I was in auction probably or something. Because he was meeting the rep from Santander and he signed for him everything and gave it to him.

Q. Do you have a specific recollection of that?

A. Specifics?

Q. Do you have a specific recollection of you being at an auction at the time that this was signed?

A. Not really.

Q. So you're just assuming that you weren't there?

A. Assuming. But I see this for the first time, the signature.

Q. First time you have ever seen this?
A. First time I see this paper.
Q. Again in the middle, is that your son's name there and your name?
A. Mm-hmm.
Q. Okay. Is that his signature to the right of his name?
A. Signature, his handwriting for both name. You see the same handwriting?
Q. I see two different signatures.
A. Yes. He signed both of them.
Q. He signed both of them?
A. Yes.
Q. If you look to the right of your name, he wrote that?
A. He wrote this, everything.
Q. But is that supposed to be your signature?
A. Yes. It's not my signature.
Q. But is it supposed to be your signature?
A. Supposed to be, yes.
Q. Is it supposed to be duplicating

Mamdoh Eltouby

your signature?

A. Yes.

Q. And that matches the one up in the right-hand box?

A. Yes.

Q. But you didn't sign it?

A. Not sign it.

Q. There's another signature at the bottom?

A. Mm-hmm.

Q. Is that your handwriting?

A. No.

Q. Is that your son's?

A. My son's.

Q. Is that supposed to be a representation of your signature?

A. Correct.

Q. Did you have any discussion with your son about signing these signature cards?

A. No. I don't know that he sign my name. But his name already in the company.

Q. I understand. But my question was: Did you have any discussion with your son about signing these signature cards?

Mamdoh Eltouby

A. No.

Q. Did you have any discussion with your son about the dealer agreement between Santander and Planet Motor Cars?

A. No, never.

Q. You never had a discussion?

A. Never had.

Q. About any subject at all dealing with the dealer agreement?

A. No.

Q. The second page, is that your handwriting or your son's handwriting?

A. Everything here is my son, my son's handwriting. Do you see? The same signature, the same handwriting?

Q. The same with the third page?

A. Yes.

Q. Turn to the fourth page, please. This is a page called "Dealer Affiliation," and it identifies "Planet Auto Group."

A. Yes.

Q. Was there an affiliation between Planet Auto Group and Planet Motor Cars?

A. Correct.

Q. What was the affiliation?
A. Sister company.
MR. SIMON: He asked about affiliation between the two.
THE WITNESS: What means, "between the two"?
MR. BRENER: Between Planet Motor Cars and --
MR. SIMON: You asked it earlier.
MR. BRENER: I did ask it earlier.
Q. Does this change your view at all about whether there was an affiliation between Planet Motor Cars --
A. Yes, remember I telling you it was two different entities.
Q. I understand that. This document here asks for identification of affiliations with other dealerships, and it is filled out as Planet Auto Group. Do you know why it was filled out?
A. He give also the bank and Planet Auto Group.
Q. So it's filled out so that Santander will also have a relationship with

Mamdoh Eltouby

Planet Auto Group?

A. Correct.

Q. Did you talk to your son about filling out "Planet Auto Group" under this dealer affiliation page?

A. No.

Q. Is it your testimony then that as a result of Planet Auto Group being identified on this dealer affiliation page that Santander does business with Planet Auto Group?

A. It does already business with Auto Group, and certain time because it was slow, something, they cut the dealership. They say not get enough -- enough deals.

Q. If you look at this page, there is a vendor number. Do you see the vendor number?

A. Mm-hmm.

Q. If you know, what does that signify?

A. I don't know.

Q. Again, this is your son's handwriting and your son's approximation of your signature?

A. Correct.

Mamdoh Eltouby

Q. His attempt at making your signature?

A. Mm-hmm.

Q. It says "president." Were you the president of Planet Auto Group?

A. Yes.

Q. Can you take a look at the dealer retail agreement, please. In particular, if you can look at the second page, item number 8, do you see that? It says Dealer's Representations and Warranties?

A. Correct.

Q. We discussed before certain obligations on the part of a dealer in connection with the dealer agreement, generally. Do you remember that testimony?

A. Mm-hmm.

Q. Looking at this -- number 8 -- does that refresh your memory of some of the obligations on the part of the dealer in connection with the dealer agreement?

A. This is A and B and C and D and E and F?

Q. Yes. It's a list of

Mamdoh Eltouby

representations and warrants by the dealer.

MR. SIMON: It goes all the way up.

MR. BRENER: It goes up to M.

Q. I'm not asking you to memorize it certainly, but by looking through the list quickly does this refresh your memory that there are certain representations and warrants by the dealership to the lender?

A. Yes.

Q. Is it your understanding that these are obligations on the part of the dealer?

A. Correct.

Q. For example, if you look at D, it says, "All business practices, acts and operations of the dealer, including the sale and financing of insurance." Do you see that?

A. Yes.

Q. "And the sale and financing of automobiles...are in compliance with all applicable federal, state and local laws." Do you see that?

A. Yes.

Mamdoh Eltouby

Q. I wasn't reading everything in that, but you know where I'm looking at; right?

A. Mm-hmm.

Q. Does that refresh your memory that the dealer has to ensure that its business practices are in compliance with law?

A. I know this.

Q. If you look at F, it says "the contract." That is referring to a retail contract?

A. Mm-hmm.

MR. SIMON: If you know.

Q. And the contract is "a valid, legal, binding obligation." Do you see that?

A. Yes.

Q. "Entered into by a bona fide and competent person"?

A. Correct.

Q. "And is legally enforceable by SCUSA." Do you see that?

A. Yes. What does this mean, "SCUSA"?

Q. It's Santander Consumer USA. It's just the abbreviation or the acronym.

A. Okay.
Q. Do you understand F to mean that the contract has to be valid and enforceable; something that Santander can enforce?
A. Yes.
Q. And do you also understand that the credit information supplied by the dealer has to be true and accurate?
A. Yes.
Q. If you look at J, is it your understanding that the vehicle has to be "accurately described"; right?
A. I know all this.
Q. Okay. And if you look at K, K says the dealer does not know of any fact that indicates the uncollectability of the contract?
A. Correct.
Q. So is it your understanding that the dealer can't be making a contract here that he knows is not collectable?
A. Correct.
Q. You understand that?
A. I understand that.
Q. Okay. If you look at the next

Mamdoh Eltouby

section, number 9, it says "Dealer Liability." Do you see that? It's right after the whole list on 8. Do you see under "Dealer Liability" there is a section entitled "Repurchase"?

A. Yes. Dealer liability.

Q. And it was your testimony before that, in instances in which the dealer violates its obligations, the lender can require repurchase of the contract; correct?

A. Correct.

Q. And so this section here talks about repurchase. Is it your understanding that if a dealer's representation or warranty turns out to be breached or untrue, that a dealer can demand repurchase?

A. Correct.

Q. So is it your understanding that if there's a breach of any of the categories that we just went through in section 8 -- if there's a breach of that, or if some representations are untrue -- that Santander can demand repurchase of the contract?

A. Correct.

Q. If you look further on item 8A, it

says that Santander can do a number of things. It can seek a current pay-off. Do you see that?

A. Mm-hmm.

Q. And it can seek to recoup its losses and expenses. Do you see that?

A. Yes.

Q. And that includes attorneys' fees, okay? Is that consistent with your understanding of what a lender can seek, or what Santander can seek, from Planet Motor Group in connection with this contract?

A. Correct.

Q. So in other words if there is a misrepresentation or if there is a breach of a representation or warrant, Santander can seek to recover its losses, including attorneys' fees?

A. Correct.

Q. If you look 9F, it says "Dealer Indemnity." Can you go down to that?

A. Dealer indemnity, yes.

Q. It says, "Dealer shall indemnify, defend and hold SCUSA" -- again, that's

Santander -- "harmless from any claims, losses, damages, liabilities and expenses, including attorneys' fees and costs of litigation which relate to a contract purchased by SCUSA." Do you see that?

A. I see that, yes.

Q. And it goes on to say, "and arise from dealer's breach or default under this agreement." Do you see that?

A. Yes.

Q. Is that consistent with your understanding that if there's a breach of this contract -- the dealer contract -- that the dealer is responsible for indemnifying and defending and holding harmless Santander?

A. Correct.

Q. Is that your understanding?

A. Yes.

Q. So in other words, the dealer is responsible for covering the costs incurred by Santander as a result of a breach; do you understand that?

A. I understand that.

Q. And that is consistent with your

understanding?

A. Mm-hmm.

Q. Do you also understand that the indemnity covers dealer's conduct, too? Do you see that in the section? So in other words is it your understanding that the dealer is obligated to indemnify, defend and hold Santander harmless for dealer conduct in connection with the contract?

A. Mm-hmm.

Q. Yes?

A. Yes.

Q. And that's consistent with your understanding?

A. Yes.

Q. You understand that to be the case?

A. Yes.

Q. And also the dealer is obligated to indemnify, defend, and hold Santander harmless for a failure of the retail contract to comply with the dealer's representations and warranties in section 8?

A. Yes.

Mamdoh Eltouby

Q. Do you see that?

A. Mm-hmm.

Q. "Or result from any act or omission on the part of the dealer"?

A. Yes.

Q. So in other words if there's a problem with the retail contract and the dealer has breached this dealer agreement, the dealer is required to pay for the costs incurred by Santander. Do you understand that?

A. Correct.

Q. And that is consistent with your understanding of the dealer's obligations under the dealer agreement?

A. Yes.

Q. In this action or group of actions --

A. Can I get a copy of this?

Q. You want a copy of it? You can have this copy right here. [Handing.]

There's a number of cases here, two of which involve a woman by the name of Ms. Dong, and another named Mr. Freire. Are you aware of what has been alleged by Ms. Dong

Mamdoh Eltouby

in this case?

A. I know that something happened wrong and I did already give him pressure, to Mr. Estrada. I asked for the car, to release the car, you know. I not receive any money. We asked the customer, we trying to get them approved, because the customer cannot speak English. Every time Santander talking with the customer, they don't understand, and they don't final the deal, you know. This is what I understand. I don't know if he buy time or it's true or not true.

Q. Do you know specifically what Ms. Dong is alleging here?

A. I see her first time here. I wish I see her before, that she can tell me what happened to her exactly.

Q. Do you know specifically what she is alleging here?

A. No.

Q. Do you know what her complaints are?

A. Yeah, her complaint is she paid for the car and they get from Santander loan.

What I understand after I meet her, I understand this is -- what's his name -- Julio Estrada, he take all the money from her, and then when I give him pressure and I tell him, "Listen, where is the money for the car? How long is the car gonna be not funded?," then he tell me, "Yeah, yeah, no problem, I get it funded for you soon." And then I see the money coming from Santander, but I don't see the girl, you know. Every time I ask for the girl, "She coming, she not here, she this, she this." And the first time I meet her was in the deposition and she say "This is not my signature." And I know very good that she tell me also that she pay everything cash to Mr. Estrada. That mean, you know --

Q. So is it your understanding that Mr. Estrada submitted a contract with Ms. Dong's purported signature on it to Santander to fund the transaction?

A. Correct.

Q. And did it turn out that that's not Ms. Dong's signature?

A. Correct.

Q. And is it the case that Mr. Estrada then sent a forged contract to Santander?

A. Yes. When I was here, I speak with the DA regarding this case. And I got to go to the precinct next to us and they report everything to this, to add it to his, you know, to his cases, one of his cases that he have.

Q. Was Mr. Estrada working at Planet Motor Cars at that point?

A. No, he was working in New York Motor Group.

Q. Was the transaction done through Planet Motor Cars?

A. Yes.

Q. So Mr. Estrada submitted a false contract to Santander, seeking funding for a transaction --

A. Correct.

Q. -- that was supposedly with Planet Motor Cars and Ms. Dong?

A. Correct.

Q. It turns out that there was no transaction in which Ms. Dong needed financing;

is that correct?
A. Correct.
Q. So what Mr. Estrada sent on behalf of Planet Motor Cars was fraudulent?
A. Correct.
Q. And he defrauded Santander; is that correct?
A. Correct.
Q. Santander, as a result of the contract submission, provided financing or money; correct?
A. Correct.
Q. That money went to Planet Motor Cars?
A. Correct.
Q. Do you know what happened to the money?
A. What happened to the money?
Q. Yes.
A. It's coming to the company, and we paid for the car.
Q. You paid for the car?
A. Yes. The car wasn't paid because it was still on the floor plan, keep pushing

me, we have to get payment for this car.

Q. But you testified that Ms. Dong consummated the transaction and didn't need financing, so where did the financing funds go to?

A. I don't understand.

Q. Ms. Dong alleges a fake contract was submitted to Santander --

A. Yes.

Q. -- on behalf of Ms. Dong; correct?

A. Yes.

Q. As a result of the fake contract, Santander incorrectly thought that there was a transaction in which Ms. Dong needed financing?

A. Correct.

Q. Correct?

A. Correct.

Q. As a result of the fake contract, Santander provided financing?

A. Correct.

Q. Funds; correct.

A. Correct.

Q. Where did the funds go? From Santander to which entity?

Mamdoh Eltouby

A. To Planet Motor Car.

Q. After the funds were received by Planet Motor Car, what happened to those funds, if you know?

A. We paid the floor plan the cost of the car.

Q. You paid what?

A. We paid the floor plan the cost of the car.

Q. The floor plan?

A. Yes.

Q. Ms. Dong's vehicle was floor planned?

A. Yes. It was under floor plan.

Q. By who?

A. By Palisade Dealer Funding.

Q. By?

A. Palisade Dealer Funding.

Q. "Paliside"?

MR. SIMON: Palisades.

MR. BRENER: Palisades, okay.

Q. So does that mean that you took the funds from Santander and paid off Palisades?

Mamdoh Eltouby

A. Paid Palisades and paid the other -- you know, the warranty I think, or something. And there was a plate in Motor Vehicle, and taxes for the car, and everything.

Q. When did you discover that the contract that was submitted by Mr. Estrada to Santander was a fraud?

A. When I see Ms. Dong.

Q. That was the first time you discovered that?

A. First time, yes.

Q. And you had not heard any complaints by her prior to that?

A. No. She complain to the Motor Vehicle, but in the meantime I could not talk to her. The guy from the Motor Vehicle coming to me and I say it doesn't work so they sue me. Motor Vehicle, when they see this is another lawsuit, they say something, then they ignore it, they don't care, they don't go to specific, you know. Because you cannot sue the same company or the same case by Consumer Affair, and Motor Vehicle, and civil. You have to sue in one particular, you know.

Mamdoh Eltouby

Q. Since you discovered the fraud on Santander by Planet Motor Cars, did you communicate with Santander at all?

A. I communicated with Santander. I could not get anybody in legal to talk to him, except you. And I'm telling you this is, I want to go back to Santander, and I'm long time with Santander. It's never happen anything.

Q. But you have not repaid Santander for the Dong transaction; have you?

A. No.

Q. Why not?

A. We got pay when we finish the cases.

Q. Why when we finish the cases?

A. Remember when I telling you yesterday off-the-record, I tell you talk to bosses and see they give you the offer and we go from there.

Q. That's an offer that, if Santander will resume funding, that you would pay for the Dong and Freire transactions?

A. Correct.

Q. But until that occurs, you will

not pay Santander for Dong and Freire? Is that your position?

A. We will go to settle.

Q. But to date you have not made any payment to Santander --

A. No.

Q. -- as a result of the Dong transaction?

A. No.

Q. And you are not aware of Santander doing anything improper in connection with the Dong transaction; are you?

A. I know very good settled.

Q. As far as you know, Santander didn't do anything wrong in connection with the Dong transaction; correct?

A. Correct.

Q. So in other words, Santander didn't do anything --

A. No.

Q. -- improper in any manner with respect to the Dong transaction?

A. No.

Q. It was defrauded by Mr. Estrada?

Mamdoh Eltouby

A. Right.

MR. LANE: Objection as to form.

Q. Are you aware of Mr. Freire's allegations in this case?

A. I don't have all that case exactly, Freire. I got to go to Bruce Minsky and sit down with him and see exactly what's his complaint and if he's paying anything extra, or what's exactly -- what he complain. I don't know until now what's his complaint.

Q. Do you have any general idea of what his complaints are?

A. Not really.

Q. Are you aware that he claims that there were multiple contracts in existence and that Santander received a contract for funding that was not representative of the deal that he thought he made with Planet Motor?

A. Also what he never, he never again -- he never signed the contract?

Q. I'm just asking if you're aware of that --

A. No.

Q. -- that allegation?

Mamdoh Eltouby

A. No.

Q. And, like the Dong situation, you're not aware of any wrongdoing on the part of Santander in connection with the Freire transaction; correct?

A. Absolutely not.

Q. Are you aware generally of how a financing transaction happens? Let me ask it a better way: During the course of a transaction with a customer, are you aware of when a lender becomes involved?

A. Yes.

Q. When does the lender become involved?

A. When submit the deal, and Santander send an approval. And the finance guy, he is structure the deal with the customer, and the customer sign the contract and send it to the bank.

Q. Now I'm asking you generally about any lender, not just Santander.

A. Same thing.

Q. So it's your understanding, then, that a customer comes into a dealership?

Mamdoh Eltouby

A. Yes.

Q. And talks to a salesperson, negotiates -- if the customer is interested -- with either the salesperson or with the F&I guy?

A. Correct.

Q. They come together on terms of the sale price?

A. Yes.

Q. And at that point they submit financing requests and the underlying documents to the lender; is that correct?

A. Correct.

Q. Prior to when that happens, when the F&I guy or the sales guy sends over the paperwork to the lender, it's correct that the lender is not involved in the negotiation of the terms; correct?

A. No.

Q. The lender does not get involved in marketing and advertising to customers; is that correct?

A. No.

Q. The first time that the lender

Mamdoh Eltouby

gets involved is after the negotiation and discussions have occurred -- between the salesperson and the customer, and the F&I person and the customer?

A. Correct.

Q. And then the lender gets the paperwork?

A. Correct.

Q. And that paperwork is a credit application; correct?

A. Credit application.

Q. And is it also a buyer's order?

A. Buyer's order.

Q. What else gets sent to the lender?

A. Driver's license and the installment contract.

Q. The retail installment contract?

A. Correct.

Q. And those are signed by the customer?

A. Signed by customer.

Q. And filled out by the customer, with respect to the credit application?

A. Yes.

Mamdoh Eltouby

Q. All the information is filled out and it's sent off to the lender?

A. And Santander used to be -- to make interview with the customer.

Q. I will get to Santander in a minute.

A. Okay.

Q. I'm just talking about generally.

A. Yes, generally.

Q. And that all gets filled out, and the lender is not involved in filling out that information?

A. Correct.

Q. And then the lender gets the information and decides whether to purchase the retail installment contract and fund the transaction?

A. Correct.

Q. Is that correct?

A. Mm-hmm.

Q. And you indicated that Santander required an interview with the customer?

A. With the customer, yes.

Q. Does that occur before or after

the funding occurs?

A. No, after the customer taking the car. Before the funding.

Q. But after the customer has taken the car --

A. We verify with the customer everything is okay, you driving the car, you have the car, anything wrong, this, this, this. They say it's fine, everything is fine, then it's funded.

If they not -- if they cannot get to the interview, then they don't fund it.

Q. What is your understanding of that; how do you know that that's the procedure?

A. Because I know very good when the car is not funded, then the customer not make interview with the bank.

Q. Do you follow up to make sure that those interviews have occurred, or is that not your job?

A. If I see this car not funded, I go to ask in the F&I guy, ask him why is the car not funded.

Mamdoh Eltouby

Q. Do you recall that happening in connection with Santander at all?

A. He -- he is the connection with Santander.

Q. Do you recall that ever happening, in which funding didn't occur because the interview had not happened?

A. Sometimes they return the contract.

Q. And that is Santander?

A. Yeah, because they cannot reach the customer.

Q. Do you know if Santander made demands for indemnification in these cases; Freire and Dong? Have you ever seen any demand letters?

A. Demand letters?

Q. Yes.

MR. BRENER: I will mark them.

(Multipage document, the top page being a letter on letterhead of LeClair Ryan, dated March 14, 2014, is marked as Defendant's Exhibit B for identification, as of this date.)

Mamdoh Eltouby

(Letter on letterhead of LeClair Ryan, dated June 23, 2014, Document is marked as Defendant's Exhibit C for identification, as of this date.)

(A brief recess is taken.)

oOo

Q. Let me show you what has been marked as Exhibits B and C.

MR. SIMON: These were sent to Bruce; they were sent to New York Motor Group in care of Bruce, Bruce got both these.

Q. The outstanding question is: Have you seen these documents before? Take a look at them.

MR. SIMON: The demand letters, and that is his law firm. Do you see?

A. I never see this.

Q. Either one; either B or C?

A. Not this one here. [Indicating.]

Q. That's different, hold on. You looked at Defendant's Exhibit C, which references the Dong case. And you have also not seen Defendant's Exhibit B, which represents the Freire case.

A. I never see these, either one.

MR. SIMON: Just so the record is clear, both B and C are two-page letters from the law firm of LeClair Ryan, signed by Mr. Brener. Exhibit C is just a two-page letter. B is a two-page letter and it has an exhibit attached to it, what has been marked as Exhibit A previously.

MR. BRENER: I think Defendant's Exhibit C also referenced the contract -- it may not be in that exhibit, but it was sent as well. It just doesn't have a copy attached to it. But if you look at the letter, it references the contract as well.

MR. SIMON: Yes. To define this, C references the Dong lawsuit, and B references the Freire lawsuit.

MR. BRENER: Right. To be clear, though, each letter references --

MR. SIMON: References Exhibit A.

MR. BRENER: Yes. And enclosed,

attached, as well.

MR. SIMON: Right.

Q. You have not seen those before?

A. No. Can I get a copy of these?

Q. I will get you a copy.

A. Okay, no problem.

MR. SIMON: Minsky has these.

Q. Mr. Minsky signed both on behalf of New York Motor Group and Planet Motor Cars, but you have not seen them.

Do you understand what demand letters are generally?

A. Not really.

Q. Those were demand letters sent by my law firm on behalf of Santander, referencing the contract that we just went through -- which is Defendant's Exhibit A -- citing provisions in the contract and seeking payment and indemnification from the dealership. That's what a demand letter is.

You did not receive that?

A. No.

Q. I'm not going to ask you if Mr. Minsky spoke to you about it, but you're not aware of demand letters coming from Santander to the dealerships?

A. No.

Q. Is that correct; you're not aware of that?

A. Yes.

MR. BRENER: If you need copies of those letters, I'm happy to give you copies of those.

THE WITNESS: Thank you.

MR. BRENER: I don't think I have any further questions at this point. I appreciate it. I may have a follow-up or two after other counsel ask questions. I appreciate your time. Thank you.

MR. LANE: Off the record.

(A discussion is held off the record.)

oOo

CONTINUED EXAMINATION BY MR. LANE:

Q. Mr. Eltouby, it's Peter Lane again, as you recall. I'm counsel for Boris

Mamdoh Eltouby

Freire, Miriam Osorio and Zhenghui Dong. I just have some follow-up questions for you in relationship to some of the things that Mr. Brener just asked you.

You were at the deposition for Zhenghui Dong --

A. Yes.

Q. -- back in February?

A. Yes.

Q. And I believe I just heard you testify that at that deposition was the first time that you had heard that Zhenghui Dong accused New York Motor Group of forging a retail installment contract and assigning it to Santander?

A. Correct.

Q. Before that deposition, no one had ever told you that Zhenghui Dong had made that complaint?

A. No. I just only get her from DMV, that the girl she complained that she paid the car.

Q. So there was a DMV investigation --

A. Yes.

Q. -- about Zhenghui Dong?

A. Yeah, DMV. I sent to DMV already the bill of sale what I have, and installment contract. Then I don't hear from DMV. Then they come again. Then what happen is the lawsuit is coming, you know. The DMV come in and find out there's a lawsuit going on and then they back up.

Q. Did Nada, your daughter, ever tell you that Zhenghui Dong had come to the dealership and complained?

A. She tell they come a couple of time. She try to verify the verification with Santander to get the deal done.

Q. That's what Nada --

A. To get the deal funding. That's what I understand.

Q. That's what Nada told you?

A. This what he tell her and tell me.

Q. Who is "he"?

A. Julio.

Q. But after Julio left New York Motor Group, did Nada ever tell you that

Zhenghui Dong had come in and complained that a contract had been forged -- or did she ever tell you that?

A. No.

Q. Did she ever tell you that Zhenghui Dong had come to the dealership and complained about the transaction?

A. No.

Q. Did she ever tell you that Zhenghui Dong came to the dealership and showed her two different retail installment contracts and one had a forged signature on it?

A. No.

Q. You never got any information like that?

A. Never.

Q. When did Nada stop working at New York Motor Group?

A. I think, in January 2014.

Q. After Nada left, were there any women who continued working in New York Motor Group's locations?

A. The place is closed, more or less it's closed, because we cannot operate with no

Consumer Affairs license.

Q. You lost your Consumer Affairs license in January of 2014?

A. No. In November or December -- yeah, November.

Q. Were there any other women working in New York Motor Group besides Nada?

A. Some -- a girlfriend from Dewan.

Q. Dewan's girlfriend?

A. Yeah, Dewan's girlfriend.

Q. What did she do at New York Motor Group?

A. She was hanging out by him. She not working.

Q. Did she ever speak to customers?

A. Could be. I have no idea. I was not there.

Q. Did Nada ever tell you that Ms. Dong had come to the dealership and called the police?

A. No.

Q. Were you aware that Ms. Dong was at your dealership and called 911 and had the police come to the dealership?

Mamdoh Eltouby

A. There was every day police over there. Was every day, this is from problem for -- from Mr. Estrada. People coming to find out the place is closed, and say "Where is Estrada? I want my money." Then they call the police. Every other day until I close the business. I say this not going on and on, this doesn't make any sense.

Q. Did Nada tell you every time the police came to New York Motor Group?

A. Not really.

Q. Were you curious that the police kept coming to New York Motor Group so much?

A. Yes.

Q. Did you look into what the police were doing at New York Motor Group?

A. I know very good this is everything that he did it wrong. When the people come and not see him over there, they asking for the money back. "I want my money back." Then we asking, "Which money?" We asking couple time, inform us, please, why are you coming here? Sometimes I come into the place, I see people sit down, waiting --

waiting for Mr. Julio Estrada only, you know. I ask them, "Why you guys waiting?" Then they say, "We have nothing. This is only waiting for Mr. Estrada." I say, "Okay, what's the problem?" They tell, "Okay. Mr. Estrada." All the time.

Q. After Julio Estrada left New York Motor Group, when people came to complain after he left, were there ever times that you were there?

A. No. Most of the time I was not there, because it's closed, the gate is down.

Q. But after Julio Estrada left, did you tell Nada that if people complained about Julio Estrada she should tell them that he no longer works there?

A. Yes.

Q. Did you give her any direction on what she should do to resolve the problems that people were coming to complain about?

A. No. We give them the phone number for Mr. -- what's his name? -- the DA. Driscoll.

Q. Detective Driscoll?

Mamdoh Eltouby

A. Driscoll.

Q. You would give people Detective Driscoll's phone number?

A. Yes.

Q. If a consumer came in and said to you, "Julio Estrada ripped me off" --

A. Correct.

Q. -- you would just give them the number for Detective Driscoll?

A. Yeah, because he take the money from them outside of the dealership and give them already contract -- like I told you, explained, DLR, like this contract. The bogus contract, you know.

Q. You would just give them Detective Driscoll's phone number?

A. Yes. Tell them to go contact the DA right away.

Q. Would you help them resolve the financial problems that they were complaining about?

MR. SIMON: This is asked and answered.

A. How?

Mamdoh Eltouby

Q. I'm just asking, did you or didn't you; yes or no?

A. No.

Q. Before, when Mr. Brener was asking you about the transaction with Zhenghui Dong, you had indicated that once Santander funded the loan document that was assigned, the money from Santander was used to pay off Palisades?

A. Pay the cars.

Q. And pay the vendors for the after-sale products?

A. Yes, yes.

Q. Are you aware that Ms. Dong had previously paid over $13,000 in cash for the Civic?

A. No clue.

Q. You had no idea?

A. No idea. That's the reason the first time when I see her, I was big surprise.

MR. LANE: I would like to have this marked as Plaintiff's Exhibit 18.

(Document with the heading "Receipt," bearing the date of July 30, 2013, is marked as Plaintiff's

Exhibit 18 for identification, as of this date.)

MR. LANE: Let's mark this one too, as Exhibit 19.

(Document is marked as Plaintiff's Exhibit 19 for identification, as of this date.)

Q. I will hand you what has been marked as Exhibit 18.

A. Yes. This is a bogus.

Q. I didn't ask the question. What does that look like?

A. Somebody is making internet or computer receipt, write my name.

Q. Does it say "New York Motor Group" on the document?

A. Yes.

Q. With the address for New York Motor Group?

A. Yes.

Q. And it looks like it's a receipt for cash?

A. No. I not give a receipt for cash.

Mamdoh Eltouby

Q. I'm asking you: Does it look like it's a receipt for cash?

A. It's written here, "Receipt."

Q. Is New York Motor Group's address on the receipt?

A. Yes.

Q. Thank you.

A. Anybody can do this. What does it say, the initial of the guy here receive it, and paid or something. If you make a receipt like this on the computer, this is gonna be exactly the records? I never give customer receipt like this.

Q. You never gave a customer a receipt like this?

A. Yes. This could be Julio's, that he was creating anything, and he do it, exactly like the DLR.

Q. Okay. Did you have any idea that Julio Estrada was creating receipts like that?

A. No.

Q. If you had seen receipts like that, would you have done anything about them?

A. Sure. I gonna be asking first of

all, first thing I gotta ask him for the money. Where is this money going? Who received the money?

Q. Are you testifying today that you never received any cash for Zhenghui Dong's transaction --

A. Zero.

Q. -- until Santander funded the loan?

A. Exactly. Correct. I'm telling you, he take advantage for people that not understand English.

Q. I will put Exhibit 19 in front of you as well. Can you take a look at that?

A. Installment contract.

Q. That's what you call a retail installment contract?

A. Correct.

Q. Who is listed as the seller on the retail installment contract?

A. It says New York Motor Group, yes.

Q. Who is the buyer on that contract?

A. Dong.

Q. Who signed that contract?

A. I have no idea. I don't know the signature for the lady.

Q. Who signed the contract as the seller? Whose name is listed at the bottom of the contract as the seller?

A. Here?

Q. Not the signature, but the printed-out name of the seller.

A. New York Motor Group.

Q. Do you recognize the signature on the seller's line?

A. Yes.

Q. Whose signature is that?

A. This is -- what's his name? Angel.

Q. That is Angel's signature?

A. Yes.

Q. Have you ever seen this contract before; Exhibit 19?

A. No. Who is the bank here?

Q. I'm sorry?

A. Can you show me again?

Q. Sure, take a look.

A. It's not showing, it's not showing

Mamdoh Eltouby

the bank.

Q. There's no assignee listed at the bottom of the contract?

A. No. It's not showing what is the bank, what is the bank's name.

Q. At any dealership that you worked at, once an F&I representative gets a signed retail installment contract, where does the contract go?

A. To the bank.

Q. Do you keep a copy at the dealership?

A. Yes.

Q. Would Julio Estrada put the retail installment contract copies for the dealership in any particular file?

A. He keep the file with him until the deal gets funded.

Q. Until the deal gets funded?

A. Correct.

Q. You said previously -- if I'm not wrong -- that before Santander funded the deal, you had asked him --

A. Several times.

Q. -- why it wasn't funded?

A. Why isn't this funded? He keep telling me it's not interview because the lady speak only Chinese, and they don't -- they can't -- understand, and they keep sending the contract back.

Q. If a bank sends a contract -- I'm sorry, you were going to say something?

A. Yes. Then I tell him, "Okay, bring the car back, and also get me my car back to the lot, because I don't receive any money. I'm out of the money and the car."

Q. If a bank returns a contract to the dealership, how does it return it?

A. Federal Express.

Q. So it physically mails the contact back to the dealership?

A. Yes.

Q. I think you said that you spoke to the district attorney about Zhenghui Dong's case?

A. After I was here, you know, after I get surprised when she say "It's not my signature," I speak with him. He refer me, tell me go to the precinct and to just tell them everything and make a report, you know, and then we add it to his case.

Q. Did you make a report?

A. I gotta go over there.

Q. So you have not made a police report?

A. Not yet, but I got to.

Q. When did the DMV contact you about Ms. Dong's case?

A. This is long time ago.

Q. In the winter of 2014?

A. In the beginning, yes, could be in the beginning.

Q. What did you do after the DMV contacted you about her case?

A. You know, I faxed the DMV all the paperwork I have in the file, and then he come to me and he tell me this is that she -- he tell me this is, she doesn't take a loan or something. I tell him, "Can you brought her here, that I can ask her or something?" He tell me that she not understand any word of English.

Mamdoh Eltouby

Q. What did you do after that?

A. Then I surprise when I get a lawsuit right away, you know, and I say, what's going on? Then I called Bruce Minsky and tell him also, this lady, I cannot talk to her, I cannot communicate with her, I wish she can speak English so then I can see exactly what's the problem.

Q. Did you ask Bruce Minsky to help you negotiate anything with Zhenghui Dong?

A. Yes, yes. And she doesn't speak, hardly speak, English. This is the case, this is cut me already from, you know, they cut the dealership from Santander. Santander, when they find this, the legal department cut me right away, you know. Because she said, "This is not my signature."

I tried to, you know, to call them to communicate with them. This is a big, big company, you know. Who you can call? Who you asking? I asked the rep from the bank to help me, you know. They tell me it's out of my hands, it's from the top, from the legal.

Q. Who is the rep at the bank that

Mamdoh Eltouby

you spoke to?

A. Carl. His name is Carl.

Q. Carl, C-A-R-L?

A. Yes.

Q. Do you know his last name?

A. He's Korean guy.

Q. Did you ever meet him in person or you just spoke to him on the phone?

A. I speak with him on the phone. He come also to the place.

Q. Where does he work?

A. He's the rep.

Q. Do you know where his office is located, physically?

A. No. He's in the field. He go from dealer to dealer and see what's any problem with this and this, you know.

Q. When do you think you last spoke to Carl to try and resolve this with Zhenghui Dong?

A. After I get cut from them, I tell him is there anyhow that we can solve the problem? I don't know anything about the problem. And I try to -- you know very good

Julio Estrada was in jail, you know, or he get arrested or something and in the meantime I get also helpless, you know. I wish I can call the girl to speak with her. She not speak one word English.

Q. Did anyone contact you and tell you that Boris Freire was demanding to return the car and get a refund?

A. No.

Q. Nobody ever said that to you?

A. No. I don't know even what nationality he is. I don't even know what language he speak.

Q. But no one ever contacted you around November or December of 2013 and said that Boris Freire would like to return the car and just get a refund?

A. None.

Q. Do you remember finding out about Simon Gabrys's lawsuit?

A. Yes.

Q. How did you find out about Simon Gabrys's lawsuit?

A. Bruce. Bruce tell me.

Mamdoh Eltouby

Q. After your attorney told you about Simon Gabrys's lawsuit, did you conduct any investigation into the papers for Simon Gabrys's transaction?

A. I not remember. He buy, I think, a Camry or something like this.

Q. If it will help your memory, I will let you know that he bought a Nissan of some kind. I don't remember what kind.

A. Nissan?

Q. Yes.

A. A Nissan Murano, maybe?

Q. I don't know. But did you look into the papers?

A. I don't really remember. I know not with the name, I know with the cars, you know, with the car make and the model. I feel the guy he bought this, then I remember him. I wish I see these people and I, you know, I speak with them and solve the problem.

Q. When did you find out about Zhenghui Dong's lawsuit?

A. Here.

Q. The lawsuit.

Mamdoh Eltouby

A. The lawsuit?

Q. Yes.

A. When I get from Santander cut.

Q. When did you get cut from Santander? I'm sorry if you already answered that question.

A. I think July -- June.

Q. Of 2014?

A. Yes.

Q. So you were cut from Santander in June 2014?

A. 2013 or '14. I not remember exactly if it's '13 or '14. I have to refresh my memory. What is the contract?

Q. I believe that the contract assigned to Santander was dated August of 2013.

A. August 2013, yes.

Q. So do you remember when you were cut from Santander?

A. To tell you exactly time, I have to go back and see exactly what.

Q. When you say that you were cut, did Santander stop doing business with you --

A. Correct.

Q. -- at all dealerships that you worked at?

A. Correct.

Q. Including Planet Auto Group?

A. They don't have this bank at this time.

Q. At Hillside Motors?

A. I don't have this bank at Hillside.

Q. So at New York Motor Group?

A. No. Planet.

Q. Planet was the only one that had this?

A. Yes.

Q. But Planet was not in operation in 2014; isn't that correct?

A. Yes. The reason I'm telling you, I don't remember it's 2013 or '14, I don't know.

Q. When Planet cut you because of Zhenghui Dong --

MR. BRENER: Objection. I think you said it wrong. It's not "Planet." It's Santander.

Mamdoh Eltouby

MR. LANE: Thank you so much.

Q. When Santander cut you, when Santander stopped doing business with your dealerships, did you take any actions to review Ms. Dong's transaction?

A. Yes.

Q. You reviewed the file?

A. I called. I see the file, and I already sent it to the Motor Vehicle, all the paper -- I told you before -- and also I tried to contact Bruce and tell him this, why you not see what's a problem exactly. But I'm sorry to say Bruce is very busy.

Q. I see.

A. He never -- okay, don't worry, don't worry, and then put me on shelf.

MR. LANE: I don't really want you to tell me about your conversations with your lawyer.

Q. When you were answering Mr. Brener's questions just now, I believe you indicated -- and correct me if I'm wrong -- you indicated that Planet Motor Cars and Planet Auto Group are sister companies?

Mamdoh Eltouby

A. No. This is, okay, I corrected right away, in two minutes. I say two different identities.

Q. And then you also testified that your son had signed contracts with Santander?

A. Correct.

Q. Yet he had attempted to sign your signature on the contract?

A. Probably he did this without any, you know, obligation, because I'm his father, you know.

Q. How old was your son when he was signing these contracts with Santander?

A. At this time he was -- he was born 1978, and this was 2010. This mean he was 27 -- no.

Q. Thirty-two years old?

A. Thirty-two? Yes, yes, 32.

Q. Thirty-two years old?

A. Thirty-two.

Q. How long had he been working at Planet Motor Cars?

A. All of his life, you know. When he was -- he finished NYU, and he was working mortgage broker. Then he working for Acura, Manhattan Acura. Then he come and working for me.

Q. Did you tell him that he should be signing your name to contracts on behalf of Planet Motor Cars?

A. I never told him sign my name.

Q. Did you know that he was signing your name on the contracts?

A. No. I didn't know. I see -- the first time I see this.

Q. When Mr. Brener showed that to you just now was the first time?

A. I see the first time. I recognize right away this is not my signature.

MR. LANE: Do you have any follow-up after that?

MR. BRENER: I have no follow-up.

MR. LANE: Okay. I'm going to pass the witness. We will take a break and we will resume with Mr. Grossman.

(A discussion is held off the record. A brief recess is taken.)

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Mamdoh Eltouby

EXAMINATION BY MR. GROSSMAN:

Q. Good afternoon, Mr. Eltouby. My name is Lance Grossman. I am the attorney for M&T Bank. I represent M&T Bank in three of the related lawsuits, for which the plaintiffs are Chowdhury, Gabrys and Tuhin.

I will ask you a series of questions. If at any time you don't understand my question, sir, please advise me, and I will do my best to rephrase the question. If you answer the question, sir, I will interpret that to mean that you understood the question, and I will move on to the next question.

The same ground rules apply as when the other attorneys asked you questions. If you don't understand, please so advise me. If you need to take a break, please so advise me and I will do my best to try to accommodate you.

Obviously, you have now been here long enough to know that the court reporter takes down only verbal statements, not hand or head movements or gestures. I will ask you to verbalize your answers. Once again, the court

Mamdoh Eltouby

reporter only takes down one person talking at a time. Please allow me to finish my question before you answer, and I will allow you to finish your answer before I start the next question. Are you okay with that?

A. Yes.

Q. We've been going for a long time over two days, sir. In deference to your counsel, I just want to make sure that you're okay to proceed with this deposition. I don't know how much longer it's going to be. I will try to get done as soon as I can, but I do want to make sure that after this extended period of time that you are capable of continuing with your deposition.

A. Yes.

Q. Sir, with respect to M&T Bank, do you remember when you were first introduced to M&T Bank?

A. Over ten years ago.

Q. And that was through which company?

A. Planet Motor Car.

Q. How were you introduced?

A. This is Jim Erickson.

Q. Mr. Erickson is the M&T representative in your district or in your area?

A. My district, yes.

Q. Did there come a point in time, sir, when you discussed with Mr. Erickson obtaining financing from M&T Bank?

A. No. It was opening for sign independent dealer.

Q. He was signing independent dealers?

A. Yes.

Q. And Planet Motor Cars was an independent dealer at that time?

A. Correct.

Q. At that time, did Planet Motor Cars have any other banks that they were using for financing?

A. Yes.

Q. Who were they at that time?

A. Capital One. TD Financial. Ally Bank.

Q. TD Bank, Ally and?

A. Capital One. And Credit Acceptance Corp.
Q. Sir, just a couple of questions as a background. Who is the person that would open up and review the mail that comes in to Planet Motor Cars?
A. We have a controller.
Q. Who was the controller?
A. She was named Julie King. [Phonetically]
Q. Who would be the person that would open up the mail in the years 2013 and 2014?
A. 2013 and 2014?
Q. Yes.
A. In which company?
Q. Let's start with Planet Motor Cars.
A. In 2013 and 2014 -- there was not exist in '14. It was only until '13.
Q. Okay. In 2013, who would open up the mail at Planet Motor Cars?
A. This is one of the secretaries.
Q. Secretaries?
A. Yes.

Mamdoh Eltouby

Q. Did you review the mail that came in?

A. Yes, if any problem.

Q. What about New York Motor Group in 2013 and 2014; who would open up the mail there?

A. It was my daughter, Nada.

Q. Would you review the mail that Nada opened up and looked at?

A. Yes, if there's any problem, she tell me.

Q. Following up with what previous counsel had asked you, I don't think I was able to determine whether or not you were an officer -- not an owner, an officer -- at Planet Motor Cars at any time through today. Are you an officer?

A. No. I was only manager, a GM.

Q. GM, general manager?

A. General manager, yes.

Q. You were never an officer?

A. No.

Q. Were you ever an officer at New York Motor Group?

Mamdoh Eltouby

A. Yes, I am.

Q. And you still are?

A. Yes.

Q. What job title do you have?

A. Officer.

Q. President, vice president, secretary?

A. Member.

Q. A member?

A. Because it's LLC.

Q. Who were the officers at Planet Motor Cars, if you were never an officer?

A. It was Mohamed Masaud and Magdy Eltouby.

Q. Do you know what their office or positions were? Do you know if one was a president, vice president, treasurer; do you know?

A. Magdy was like a secretary, and Mohamed was president.

Q. Did anyone else ever have authorization to sign any documents as president or secretary other than those two, as far as you know?

A. No.

Q. During the time that you were involved with Planet Motor Cars and New York Motor Group, was M&T Bank ever involved in advertising of any automobile?

A. No.

Q. Was M&T Bank ever involved in determining what the price of any automobile was to be advertised for?

A. No.

Q. At any time was M&T Bank ever involved in determining the price that any particular automobile was to be sold for?

A. No.

Q. During the time that you were involved, sir, with Planet Motor Cars and New York Motor Group, was M&T Bank ever involved in which cars were put out on the lot?

A. No.

Q. Were they ever involved directly with any of the floor planners that were involved?

A. No.

Q. Did M&T Bank ever have a copy of

or review any of the contracts that either of those companies had entered into with the floor planners?

A. No.

Q. Sir, to try to save some time: Mr. Brener during his questioning of you asked you a series of questions regarding dealer agreements?

A. Mm-hmm.

Q. Is that a "yes"?

A. Yes.

Q. And you testified that you knew what a dealer agreement was?

A. Correct.

Q. And you had testified, I believe, when Mr. Brener asked you about some of the terminology in the Santander dealer agreement; do you remember that?

A. Yes.

Q. Were you aware if Planet Motor Cars and New York Motor Group had also entered into any dealer agreements with M&T Bank?

A. I know only New York -- um, Planet Motor Cars, yes.

Q. You are aware of a written dealer agreement --

A. Yes.

Q. -- between Planet Motor Cars and M&T Bank?

A. Correct.

MR. SIMON: I'm sorry, you also asked about New York Motor Group too; right?

MR. GROSSMAN: Yes. And he said he only was aware of one.

THE WITNESS: No. In New York Motor Group.

Q. You are not aware of an agreement with Planet Motor Cars?

A. Yes.

Q. I'm confused, I'm sorry. Let's start again. New York Motor Group --

A. Yes.

Q. -- were you aware of a written dealer agreement with M&T Bank?

A. Yes.

Q. Planet Motor Cars; were you aware of a written dealer agreement with M&T Bank?

A. Yes.

Q. So there were two dealer agreements?

A. Yes.

MR. GROSSMAN: Let's have these marked.

(Document entitled "Dealer Agreement" is marked as Defendant's Exhibit D for identification, as of this date.)

(Document entitled "Dealer Agreement" is marked as Defendant's Exhibit E for identification, as of this date.)

(A discussion is held off the record.)

Q. Sir, I will show you two documents. One is labeled Defendant's Exhibit D and one is labeled Defendant's Exhibit E for identification.

MR. SIMON: Off the record.

(A discussion is held off the record.)

Q. I will show you Exhibits D and E

for identification. Exhibit D is PRFD000004 through and including 000007. And Exhibit E is PRFD000000 through and including 000003.

I will ask you to take a look at those documents, please.

MR. SIMON: You just said "PRFD"?

MR. GROSSMAN: Yes.

MR. SIMON: That stands for what, "PRFD"?

MR. GROSSMAN: That's a response to Plaintiff's Request For Documents.

MR. SIMON: That's from M&T Bank?

MR. GROSSMAN: Yes.

MR. SIMON: Okay, thank you.

Q. Sir, I want to make sure that you have had an adequate opportunity to review it with your counsel if necessary. Have you looked at these documents?

A. Yes.

Q. Do you recognize what these documents are?

A. I believe this is the agreement between --

Q. Well, just tell me which one

you're looking at. Give me the exhibit letter.
A. Dealer agreement. Exhibit E.
Q. And that is a dealer agreement for Planet Motor Cars?
A. Yes.
Q. Do you see a signature on the last page, sir?
A. Yes.
Q. And the date, what was the date?
A. The date was 2004.
Q. March 22, 2004?
A. Correct.
Q. Do you see that it's signed, where it says "By" on the second line down?
A. Yes.
Q. Could you tell me whose signature that is?
A. I think it's my son.
Q. Your son's signature?
A. Yes.
Q. That's not your signature?
A. No. My signature is right there. [Indicating.]
Q. Your son signed this as president

Mamdoh Eltouby

of Planet Motor Cars in 2004?

A. Yes.

Q. He was working at Planet Motor Cars in 2004?

A. Yes, he did.

Q. And on Exhibit D -- the other dealer's agreement -- there is a signature on the last page?

A. This is my signature.

Q. As president of?

A. New York Motor Group.

Q. What is the date of this?

A. This is November 2012.

Q. Do these documents tell you when M&T Bank started to do financing for both Planet Motor Cars and New York Motor Group?

A. It started already from 2004 for Planet Motor Car, and 2012 from New York Motor Group.

Q. Just for my own edification, I want to ask you this: The signatures on the last page of each document you're saying are different signatures?

A. Yes.

Mamdoh Eltouby

Q. Your testimony, sir, is that you never signed a dealer's agreement for Planet Motor Cars?

A. Yes.

Q. Again, without wasting a lot of time, Mr. Brener asked you a number of questions regarding what was contained in Santander's dealer agreement. I want to first ask you a general question. Do you believe that the dealer agreement I have shown you as D and E set out the duties and obligations of both Planet Motor Cars and New York Motor Group to M&T Bank with respect to financing?

A. Correct.

Q. And that the obligations contained in both of these documents were obligations that each of those companies were to abide by in order to remain in good standing with M&T Bank?

A. Yes.

Q. Looking, for example, at Exhibit E, paragraph number 9.

MR. SIMON: That's the one with Planet.

Mamdoh Eltouby

Q. Contained therein are warrants and representations that the dealership makes, stating in subparagraph J: "Each representation and warranty made therein by any Buyer, Guarantor or Other Owner is correct and complete." Do you understand that the dealerships were to provide correct information to the banks in order for the banks to keep these companies in good standing?

A. Yes.

Q. And that you were not supposed to forward any documentation with information that was incorrect to the banks?

A. Yes.

Q. And that if you did, sir, that the ramifications were that M&T Bank could cease doing financing with either of these companies?

MR. SIMON: Well, let me just concede that whatever the obligations upon each of the dealerships in D and E, if there were violations by the dealerships -- Planet or New York Motor Group -- that there were certain remedies set forth in D and E, and that the remedies set forth in there could be used by M&T to enforce its rights.

MR. GROSSMAN: Thank you, counsel. I will accept that.

Q. One of the provisions provides that if it's determined in the sole discretion of M&T that there was any material misrepresentation or warranty made to M&T Bank that they could compel you to buy back the contracts for which they provided financing?

A. Correct.

Q. Do you believe that both D and E were binding contracts on both Planet Motor Cars and New York Motor Group?

A. It's different binding.

Q. Do you understand that these were binding agreements on both of the companies?

A. Yes, binding. Different companies.

Q. Sir, did there come a point in time in which M&T Bank made certain demands on both Planet Motor Cars and New York Motor Group to buy back the loan obligations with respect to the Tuhin plaintiff?

MR. SIMON: You mean, a repurchase demand?

Q. With respect to Tuhin or Gabrys, do you remember any demand being made?

A. When the defendant, which is Bruce Minsky, you know, he told me this is, your paper is very tight, 100 percent tight, you know. I don't know what the reason you buy the dealer back, you know. I ask him -- Jim Erickson -- and he tell me the bank doesn't want any headache, you know. So if I buy the deal back, that means I got to be out of the money and out of the car. That means is the bank gonna be calling the customer and tell, the car, we have nothing to do with you anymore, you have free car, you know. And then he keep the car for nothing, for free.

Q. Isn't it true, sir, that once a bank finances a transaction, they're out of the money if the customer does not make the monthly payments?

A. I don't know they making monthly payment or not.

MR. SIMON: I will stipulate, to

shorten the deposition. I will concede that if a repurchase demand is made by a bank generally under a dealer agreement of the type of Exhibits D and E that, upon the dealership repurchasing the loan from the bank, the dealership obtains from the bank all of its rights pursuant to the loan agreement, retail installment contract, etc. And that would entitle the dealership to itself proceed, instead of the bank, against the customer to enforce the loan agreement and also to repossess the vehicle. Is that satisfactory?

MR. GROSSMAN: I will accept that.

MR. SIMON: That's what you were getting at, right?

MR. GROSSMAN: Yes. Let me ask one or two more questions.

(Document on letterhead of M&T Bank to Planet Motor Cars, dated February 4, 2014, is marked as Defendant's Exhibit F for identification, as of this date.)

Mamdoh Eltouby

(Document on letterhead of M&T Bank, to New York Motor Group, dated February 4, 2014, is marked as Defendant's Exhibit G for identification, as of this date.)

(Document on letterhead of M&T Bank, dated November 20, 2013, is marked as Defendant's Exhibit H for identification, as of this date.)

Q. Just a couple of quick questions about Exhibits D and E. Are you aware that contained in these dealer agreements are provisions that the companies would be liable to pay M&T's legal fees that they spent enforcing the terms of these dealer agreements?

A. Can you --

Q. Why don't we do this.

MR. SIMON: I can maybe concede that whatever the documents say, and whatever remedies and requests that the bank has set forth in those, that my client does not dispute it.

MR. GROSSMAN: Okay.

Q. I just want to know if you were

aware of that? Are you aware that there were provisions contained in these documents that stated that if M&T Bank had to expend legal fees with respect to any of the financing they provided for either of these companies, that the companies would be responsible for legal fees and expenses?

A. Yes, I know that.

Q. Okay. I'm going to show you three documents, sir, that have been labeled Defendant's Exhibits F, G and H. I will ask you to take a look at those, sir.

MR. GROSSMAN: Whenever he is done looking at them, let me know.

(A discussion is held off the record.)

Q. Sir, I have shown you three documents labeled Defendant's F, G and H. Exhibit H is PRFD -- plaintiff's request for documents -- 00008 and 00009.

G is PRFD -- plaintiff's request for documents -- 000010 to 000011 [sic].

H is PRFD -- it's upside down -- 000038 and 000039.

Have you ever seen those documents before today, sir?

A. No.

Q. Let's look at where they were sent to. Let's look at F. Exhibit F was sent to Planet Motor Cars Inc., at 160-14 Hillside Avenue, Jamaica, New York 11432. Was that a correct address back on February 4, 2014?

A. February 4th, yes.

Q. But you're saying that you never saw that, if the document was sent to that address?

A. I never get it.

Q. Okay.

A. Never get it.

Q. Who would be opening the mail then?

A. That's the secretary over there.

Q. I did ask you if you would look at any of the mail that came in. And you said, if it was important mail, you would look at it; correct?

A. Yes.

Q. This is not important?

Mamdoh Eltouby

A. This is all the time, this is anything, a problem, Mr. Erickson, he always coming to the dealership.

Q. Well, this one was sent by regular mail. I just want to make sure your sworn testimony is that you're saying even though it was sent to the right address, you didn't see it?

A. How come this is -- you know, Mr. Erickson, he speak with me.

Q. This was not sent by Mr. Erickson. This was signed by Mr. Mariani, vice president and counsel of M&T Bank?

MR. SIMON: This was sent February of 2014 to Planet.

MR. GROSSMAN: Yes.

MR. SIMON: You're assuming that it got there. I think he testified, and you may want to inquire when Planet shuttered.

MR. GROSSMAN: I will look into it.

Q. Let's now go to G, which was sent on February 14, [sic] 2014. This was sent to

Mamdoh Eltouby

New York Motor Group at 60-20 Northern Boulevard, Woodside, New York 11377.

A. I was not there.

Q. What do you mean, you weren't there?

A. This was shut down. There was no mail coming. All the mail was returned.

Q. Was returned?

A. Yes.

Q. You didn't have a forwarding address?

A. We don't forward to anyplace else.

Q. So when you shut down, you didn't put a forwarding address with the Post Office?

A. I never put anything, no.

Q. So anything that came in after whenever you say you shut it down would just go into a dead mail center somewhere?

A. I don't know. I never get the mail from New York Motor Group.

Q. So Planet Motor Cars, on February 14, 2014; that was still open?

A. No.

Q. So that and New York Motor Group

were both closed down on February 14, 2014?
A. Yes.
Q. So you never had a forwarding address for either of these?
A. No.
Q. Let's go back then to Mr. Tuhin's, which was sent on November 20, 2013. It was sent to New York Motor Group LLC. Exhibit H. It was sent to 60-20 Northern Boulevard, Woodside, New York 11377.
A. Mm-hmm.
Q. November 20, 2013; is that a date that New York Motor Group was still open?
A. Yes.
Q. This was also sent by electronic mail. Did you ever get an email of this letter?
A. Email?
Q. Yes.
A. Yes, could be we get an email, but Nada, she was removing emails all the time for the company.
Q. Who would look at your email?
A. It's Nada, my daughter, she was

looking for email.

Q. Did you, sir, ever see this letter in November of 2013?

A. Yes. Mr. Jim Erickson came. I explain him the situation. I tell him. He tell me, "Okay, why not take the car from the guy?" And I tell him, "Okay, I already tell the guy to bring the car to put it for sale here to help him to get out of the deal," you know.

But the customer, he come and he left the car over there without any title, without anything, so I can't do anything with the car. It's like a piece of metal, you know. It's not even give me consignment or write for me consignment letter, "This is okay, my name is Tuhin, and I give the car -- my car -- to New York Motor Group to sell my car" -- or this, or take care of my problem, or something.

Q. Sir, I appreciate that. I will get to that in a second.

Right now, I'm interested in this letter. You're saying that somehow you got it, whether Mr. Erickson gave it to you or you got it in an email?

A. Yes.

Q. Pursuant to the terms of this letter we made certain requests to you with respect to the Tuhin matter. Did you, sir, undertake to abide by your obligations under their dealer agreement by buying back the car or making M&T whole?

A. I don't do anything wrong to buy the deal back.

MR. SIMON: He is just asking what you did with respect to the letter, the demand in the letter.

Q. Did you do anything with respect to the demand in the letter, sir?

A. Let me read it first.

MR. SIMON: They made certain demands that are in this letter, do you see? That you pay lawyers, that you do certain other things. The question is: Did you do anything with respect to the demands in this letter?

Q. As counsel stated, did you, sir, on behalf of the company, do anything that was requested in this letter, Defendant's Exhibit H?

A. I gave it to my lawyer, which is Bruce Minsky.

Q. Other than giving it to your lawyer, did you, sir, or did the company do anything that was requested in the letter?

A. No.

Q. Why not?

A. Because I don't feel I did anything wrong with this customer.

Q. Did you put that in writing to M&T Bank at all?

A. No.

Q. Let me go forward. I want to reintroduce you to Defendant's Exhibits D and B from the 10/27/14 deposition.

MR. SIMON: The deposition of plaintiff Tuhin.

Q. Do you remember looking at these documents during questioning by counsel?

A. Yes.

Q. And issues were made as to why the numbers were broken down on Defendant's B, but were totalled in Defendant's D? Do you remember?

A. Yes.

Q. And you testified, sir, that as long as the bottom line number was correct, that's all that mattered. Do you remember saying that?

A. Yes.

Q. Sir, isn't it true that the dealership -- with or without the assistance of Mr. Tuhin -- was trying to defraud the bank in having both of these bills of sale signed?

A. Why defraud?

Q. Let me ask you something, sir. You have been in the business a long time; correct?

A. Mm-hmm.

Q. Do banks finance aftermarket add-ons?

MR. SIMON: You mean, after-sale.

Q. After-sale add-ons.

A. The reason we put it already in the, in --

Q. Let me just ask it: Do banks

Mamdoh Eltouby

finance after-sale add-ons?

A. I don't know the finance, if this is all the item.

Q. So, sir, if a bank is only going to finance the purchase of an automobile, and on Defendant's B it says the automobile is $12,000, who would have to pay the add-ons?

MR. SIMON: Note my objection to the form of the question. Do you understand that question?

THE WITNESS: No.

MR. GROSSMAN: I will rephrase it.

Q. If M&T Bank received Exhibit B -- part of the package that you said finance companies get -- what would be the amount of the sale price of the car, based on Exhibit B, the car alone?

A. $12,000.

Q. And Exhibit D -- which is a copy of the bill of sale that the bank did get -- shows a purchase price of the car of how much?

A. $22,700 something.

Q. Let me ask you something. If on Exhibit B, the sales price was $12,000, all these additional add-ons -- which I will represent I believe total about another $10,000 -- were carved out of the purchase price and line-itemed like they are here; would the bank provide any financing to pay for those line items?

A. I'm not finance guy. You have to ask the finance guy, because I don't know if this is how this is working exactly with the finance -- if the bank taking the item or not taking the item. The bank allowed after-sale; right?

Q. Let me ask a question. Did M&T Bank make any requirement that any customer has to purchase any add-ons to get financing?

A. I have no clue. I don't know.

Q. Looking at Exhibit D, if Mr. Tuhin agreed with whoever was in your finance department to try to defraud the bank by saying, "Put everything into the purchase price so that the bank will finance the $22,000" --

MS. LINDERMAYER: Objection to form.

Q. If Mr. Tuhin wanted to try to

defraud the bank --

MS. LINDERMAYER: Objection to form.

MR. GROSSMAN: I understand. Let me finish the question. Then you can object to the form.

Q. If Mr. Tuhin wanted to try to defraud the bank by agreeing with the dealership to put all the line-item add-ons into the purchase price, so that when the bank saw the top-line purchase price, it believed that that was the purchase price of the car -- and not the add-ons -- would the bank have been actually financing the true amount of the car or financing the amount of the car plus the add-ons?

MS. LINDERMAYER: Objection to the form.

Q. Do you understand the question?

MR. SIMON: Can I make an inquiry? Do you understand the question?

THE WITNESS: Yes.

A. Mr. Tuhin, this could be this is his conspiracy, with Julio Estrada. Because he

Mamdoh Eltouby

give him also -- I believe he also say he give him $600 cash on the side, you know, to make for him the loan. This is I hear from Mr. Tuhin or the disclaimer what he say, you know. I don't know what happened between both of them, you know, but I believe this is already we have signed everything and agree of everything.

Q. Do you know if both of these bills of sale were sent to M&T Bank?

A. I don't know.

Q. That would have only been the finance person?

A. I don't know.

Q. We talked about the VSI?

A. Yes.

Q. Do you know what that is?

A. This is required from M&T Bank.

Q. As far as you know, is that a legal charge on a --

A. Yes.

Q. Do you know why it's put on the contract?

A. Yes, I think it's about death.

Mamdoh Eltouby

About death. When the customer, he take the car, and he go to death, the company -- which is VSI -- pay the loan.

MR. SIMON: Just an inquiry. I was not involved in the case when the bank, M&T Bank, responded to other discovery requests by other counsel or earlier counsel. Mr. Weinstein, I think, was defending the Tuhin case. So I didn't see the responses. Is it Exhibit D that was received in the context of the financing plan?

MR. GROSSMAN: Yes.

MR. SIMON: But not Exhibit B?

MR. GROSSMAN: Correct.

MR. SIMON: So you understand what he's saying is that the dealership did not send B with the retail installment contract; it only sent D, where the after-sale products were all combined. And the only one shown separately was the extended service contract. Do you understand that?

THE WITNESS: Correct.

Mamdoh Eltouby

MR. SIMON: Just so he understands that.

Q. You said that Mr. Tuhin came and you talked to him; you went to a 7-Eleven to try to resolve it, the issues?

A. Yes, I tried to resolve it.

Q. Did he ever say to you, "I never signed these documents"?

A. No.

Q. Did he ever say to you, "Someone forged my signature. I would never have signed these documents"?

A. No.

Q. Was he crying when he came to see you?

A. No. He's a man.

Q. Sorry?

A. He's a man.

MR. SIMON: Note my objection to the form. I believe that was the day of the second protest when they spoke for the first time.

Q. You said that the police showed up?

Mamdoh Eltouby

A. Yes, the police showed up. And he get his license and put it on the table and they ask him, "Did you sign this?" He say "Yes."

Q. When you say "this," is that B and D?

A. Yes. And they ask him, "Did you sign this, did you sign this, did you sign this?" He tell them "Yes." They tell him, "Okay, you cannot stand in front of here. You go to court." That's it.

Q. Did you or anyone at the dealership say to him, "Hey, Mr. Tuhin, here's your signature. Why did you want the dealership to roll all the aftermarket add-ons into the purchase price? Were you trying to get something over on the bank"? Did anyone say that to him?

A. No.

Q. Did Mr. Tuhin say that he didn't have the money to purchase these aftermarket add-ons, but he somehow wanted to find a way to buy them?

MS. LINDERMAYER: Objection to

form.

A. Could be, yes.

Q. Do you understand that if Mr. Tuhin tried to do that, that he was defrauding the bank by raising the price of the vehicle and representing that was the amount of money he was seeking financing for?

MS. LINDERMAYER: Objection to the form.

Q. Do you understand the question?

A. Yes.

Q. Do you know the answer to that?

A. Could be. But I was not there.

Q. Okay, thank you.

I believe you had testified that when you tried to work it out with Mr. Tuhin, you offered to do something with his car. Can you just repeat what you attempted to do to resolve this?

A. Yeah, I tell him give me the car, let me see, I sell it back in my lot, and I get you out of the loan, you know. Then the second day, he bringing the car through in the lot without giving us any authorization letter, without giving us a title, without anything. And then he called to somebody. He calling me, I don't know, a paralegal, a lawyer, he was telling me you have to take the car back.

Q. Do you know who that lawyer was?

A. No.

Q. Was it a woman or a male?

A. Woman.

Q. Did she say where she was from?

A. No, she not -- I not even understand what she say what's her name.

Q. Did she threaten you in any way?

A. Yes.

Q. How did she threaten you?

MS. LINDERMAYER: Objection to form.

Q. Do you understand the question?

A. Yes.

Q. It's a simple question.

A. Yes, yes.

Q. Okay, you can answer.

A. You have to take the car back, otherwise if you not taking the car back, we calling the attorney on you, going to do this,

Mamdoh Eltouby

the consumer, and all of this. She mentioned every department.

Q. Did this attorney say she was going to go to the media and try to create bad media for the dealership?

A. Yes.

MS. LINDERMAYER: Objection to the form.

Q. Did you understand that question?

MS. LINDERMAYER: Objection to form.

A. And she did already. Did already wrote something in New York Voice.

Q. Do you know who did that?

MS. LINDERMAYER: Objection to the form.

A. I don't know.

Q. Do you understand the question?

A. Yes.

Q. Okay, you can answer it then.

A. I don't know who did this, but this is coming from Tuhin.

Q. From Mr. Tuhin's attorney?

MS. LINDERMAYER: Objection to the

form.

A. Yes. Was writing already this is --

Q. Hold on a second. Did you understand the question?

A. Yes.

Q. Then you can answer.

A. Writing already this is car dealership tried to steal a poor driver, taxi driver, or something like this.

Q. Do you believe that the attorney who made those threats to you was making those statements in order to obtain publicity for herself and her client --

MS. LINDERMAYER: Objection to form.

MR. GROSSMAN: I'm not even done with the question, counsel. Allow me to finish. Can we read back what I started.

(The record is read back by the reporter.)

Q. Do you believe that the attorney who made those threats to you was making those statements in order to obtain publicity for herself and her client --

MS. LINDERMAYER: Objection.

Q. -- as opposed to seeking remedies for her client?

A. Yes.

MS. LINDERMAYER: Objection to the form.

Q. Sir, do you know that one of the claims in this case by Mr. Tuhin is that he suffered severe emotional distress; are you aware of that?

A. No.

Q. Did anyone tell you about that claim?

A. No.

Q. When you saw Mr. Tuhin, did he look like he was in severe emotional distress?

A. He was laughing with his friends. And he take me to the side, in 7-Eleven, you know, and talk to me. And I speak with him, even you know because he's a Muslim like me, and tell me Islamic brother, he says, "Listen" -- I tell him, "Listen, I help you, but this is not the way that we do it. That's not the way."

Q. Did he make any accusations against M&T Bank at that time?

A. No, I don't know.

Q. Did he appear upset?

A. No.

Q. Did he appear like he had gone without sleep for awhile?

A. No.

Q. Was he crying at that time?

A. No.

Q. Was he vomiting?

A. No.

Q. You said he was there with friends?

A. Yes.

Q. How many friends did he have with him?

A. About ten.

Q. Did he say that he wanted to keep the car if you reduced the price or gave him some add-ons or some additional --

A. I did offer him, I tell him, "I

Mamdoh Eltouby

give you like four or five-thousand dollar, and you keep the car." He tell me, "No, no, I cannot afford the payment, because the money is going to the bank is not shrinking. This is the payment." And I tell him also he can also reverse here the contract -- the $3,000 that's here -- he can return it if he don't want the warranty, he get full payment for the $3,000.

Q. And that would have been the only line-item that was contained in both B and D; correct?

A. Yes. And it look like he never buy car in his life. And he bring twice friends, you know, to go with him, to help him to see everything is correct and they tell him to pay because everything is correct, and he buying according to this. And he have a salesman who speak the same language -- Bengali, like him -- and he explain him everything before he leave. And then he still, he taking the car after one month, then he decided he want to return. After registered under his name.

Q. Did you know, sir, that one of the

allegations in these three complaints that we're discussing are claims that the dealership and M&T Bank had undertaken actions which defrauded hundreds if not thousands of consumers? Are you aware of that allegation?

A. No.

Q. Is that a true statement; that the dealership and the bank have defrauded hundreds if not thousands of consumers?

MR. LANE: Objection to the form.

A. No.

Q. Let's talk about Mr. Gabrys.

A. Yes.

Q. Mr. Lane started questioning on that; do you remember him?

A. I don't even know how he look like.

Q. Do you have any idea or independent recollection of his transaction?

A. I don't know how he look like, if he's white, black, I don't know. I never meet him.

Q. Did you, sir, review his complaint in this lawsuit against the dealership?

Mamdoh Eltouby

A. Somebody tell me about him, but I never, I never know what's he look like. He never meet me.

Q. Let's talk about Ms. Chowdhury. Do you remember Nasrin Chowdhury?

A. Not really.

Q. Do you understand that there's an allegation contained in her lawsuit that there was forgery of the documents that she signed at the dealership?

A. How forgery?

Q. I just want to know if you were aware of any allegation.

A. Which way?

Q. That someone signed her name.

A. Somebody sign her name?

Q. Yes. Are you aware of that allegation?

A. I never hear this.

Q. Did you hear from anybody that anyone was making a complaint on behalf of Ms. Chowdhury -- whether it was herself or her son -- that her documents were forged?

A. No. She bought two cars or one

car?

Q. Either one, if you remember.

A. I not remember.

Q. I don't want to put anything in your head, if you have no independent recollection.

A. I not remember.

Q. Mr. Brener started asking you questions about the procedure undertaken by the dealership when looking to obtain financing -- whether it was for Santander or for M&T Bank. I know that you're not part of the finance department, but do you understand the basic concept of how the financing works?

A. Yes.

Q. You had testified that there was an application that an applicant fills out with information?

A. Right.

Q. I believe the counsel had asked you --

MR. SIMON: Off the record.

(A discussion is held off the record.)

Q. Did you ever hear of the term, DealerTrack?

A. Yes.

Q. Do you know what DealerTrack is?

A. Yes, I know.

Q. Could you explain to me what DealerTrack is?

A. DealerTrack, this is fill up the application with the customer, or we, you know, and sometimes when we asking the customer questions, you know, then he, different answers when he sit down with the finance manager. How much he making every other week or every week, you know, that's being calculated exactly, because sometimes these people, the taxi driver, they don't want to give exactly the amount what they making, because it's a cash deal, you know. And then he ask him, "How much are you making in the month or a week?"

Q. Let me ask you, sir. Counsel showed you Plaintiff's Exhibit 16 --

A. Yes.

Q. -- earlier?

A. Yes.

Mamdoh Eltouby

Q. And you had testified that was the application. Whose handwriting is that?

A. Customer.

Q. And at the bottom, there's a signature?

A. Yes.

Q. Did Mr. Tuhin, when you saw him, ever state to you that he never signed Plaintiff's Exhibit 16?

A. He signed.

Q. He signed it?

A. Mm-hmm.

MR. SIMON: Are you referencing Exhibit 16?

MR. GROSSMAN: Yes. Can we have this marked, please.

(Document on letterhead of DealerTrack, referencing Shahadat Tuhin, is marked as Defendant's Exhibit I for identification, as of this date.)

Q. Sir, before I show you this, let's just go back to that phone call, the threatening phone call that you received from the female attorney.

A. Yes.

Q. Did she tell you she worked for a firm, or for herself? Did she say anything like that to you on the phone?

A. She was very loud and she was very temper, and she not even introduce herself. She tell me, she threaten me. I say, "How you talk to me like this? You don't understand the automobile business."

Q. Did she ever say she was from a law firm?

A. She never -- she never say what is -- which law firm it is.

Q. Did she ever say that she worked for a not-for-profit organization?

MS. LINDERMAYER: Objection to form.

Q. Do you understand the question?

A. I think paralegals or something like this.

Q. Anything else?

A. No.

Q. Let's go back to what Mr. Brener asked you. I want to see if it holds true for

M&T. He talked about leading up to the application for financing. I want to make sure it's the same for M&T as it was for Santander. A customer walks into the facility, looks at a car, he negotiates a price with a salesperson?
A. Right.
Q. Is M&T involved in that in any way --
A. No.
Q. -- in the negotiations?
A. No.
Q. Is M&T involved in the final amount that is agreed to for the purchase price of the car?
A. No.
Q. Is there any New York law that says that you can't charge as much as you want for an automobile?
A. No.
Q. Can a person walk out of a showroom and say, "That's way too much money. I don't want to pay"?
A. Yes.
Q. Has that happened?

A. A couple times.

Q. If a deal is made and the person says, "I need to obtain financing," what is the next step?

A. We take him to the finance guy and we start the procedure.

Q. Is one of the procedures, filling out Plaintiff's Exhibit 16?

A. Application.

Q. And it's signed by the --

A. Yes.

Q. -- customer?

There was some discussion about there being cameras in the facility?

A. Yes.

Q. Would the cameras have captured the signatures on the applications?

A. Yes.

MR. LANE: Can we just take a two-minute break?

MR. GROSSMAN: Sure.

(A discussion is held off the record.)

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Mamdoh Eltouby

Q. Sir, after the deal is struck, they're brought over to financing, if they have to finance the car?

A. Right.

Q. And the financing people who were involved in 2013 at the two companies were Shawn at one location, and Julio Estrada at another location?

A. Yes.

Q. You discussed paperwork. One of the pieces of paperwork is Plaintiff's Exhibit 16, or a document similar to that, which is an application in which the person writes down all their information and they sign it?

A. Right.

Q. Correct?

A. Mm-hmm.

Q. Does that document, the handwritten application, ever go to M&T Bank?

A. No, not really.

Q. What happens with that information that's on Plaintiff's 16?

A. The customer is signing this

Mamdoh Eltouby

outside. Meet with the finance guy, who run his credit first.

Q. Okay. Then if the credit comes back okay, then is a DealerTrack document prepared? Is that done on a computer?

A. And that application is started and filled up.

Q. Let's look at what has been marked as Defendant's Exhibit I, which is stamped 000007 through and including 000009. I will ask you to take a look at that, sir.

A. Yes.

Q. Do you recognize what that document is?

A. Yes.

Q. Is that a full copy of a DealerTrack agreement?

A. Yes, DealerTrack application.

Q. So what has been labeled as Plaintiff's Exhibit 17, that one-page document, that's not a full document?

A. What happens is here, also in the application here --

Q. Let me just ask you, is

Mamdoh Eltouby

Plaintiff's Exhibit 17 -- which was produced by plaintiff's counsel -- a full DealerTrack application?

MS. LINDERMAYER: Objection to form. No one ever said it was a full document.

Q. Do you understand my question? Is this a full document; Plaintiff's Exhibit 17?

MS. LINDERMAYER: Note my objection to form.

A. No.

Q. Looking at that, is that a full form?

A. Yes.

Q. Looking at the last page, do you see a signature on that page?

A. Correct.

Q. Do you know whose signature that could be?

A. The customer.

Q. Mr. Tuhin?

A. Yes.

Q. I know you're not an expert, sir, but if you look at the two signatures -- on

Mamdoh Eltouby

Plaintiff's Exhibit 16, and that document -- are they the same signatures?

A. Exactly the same.

Q. Does that mean that the person -- Mr. Tuhin -- signed that document?

A. Correct.

MS. LINDERMAYER: Objection to form.

Q. Do you know if Mr. Tuhin signed that document?

MS. LINDERMAYER: Objection to form.

Q. Do you understand the question?

A. Yes. Sure, this is the same signature.

Q. Did anyone in the whole wide world ever call you and say, "Hey, I signed that document, not Mr. Tuhin"?

A. No.

MS. LINDERMAYER: Objection to form.

Q. Now what happens with the DealerTrack document?

A. We have finance guy sit down with

the customer and he start asking these questions to fill it up for the DealerTrack.

Q. What is DealerTrack? Is that an electronic system or a manual system?

A. No. DealerTrack is software. This is sent in the deal to all the lenders. You put all your lenders already in the DealerTrack, and you click M&T, you send it; TD Financing, send it. And you see the best approval.

Q. That's done electronically?

A. Yes.

Q. You say on the actual computer screen are the different lenders?

A. Right.

Q. If a lender decided to stop doing business with Planet or New York Motor Group, would they contact you, would they send you something in the mail, or did they just take your name off of the screen?

A. Exactly. It's going to disappear in the DealerTrack.

Q. Did there come a point in time in which M&T removed their name from your

DealerTrack system?
A. Yes.
Q. When was that?
A. I not remember exactly the date.
Q. And that was for both New York Motor Group and Planet Motor Cars?
A. Yes.
Q. Was it sometime in 2014?
A. Yes.
Q. Was it after Mr. Estrada left the employ of --
A. Yes.
Q. The problems that you were having with Mr. Tuhin, Mr. Gabrys, Ms. Chowdhury, and even with Mr. Brener's cases -- Dong and Freire -- did they all take place during the time when Mr. Estrada was working for your company?
A. All the?
Q. The problems that came up. You said you started seeing problems in August?
A. Yes.
Q. The dates of Mr. Gabrys's, Mr. Tuhin's, and Ms. Chowdhury's complaints;

Mamdoh Eltouby

did they take place during the time that Mr. Estrada was working for New York Motor Group?

A. Yes.

Q. Once the different financial institutions are put onto the DealerTrack, does the DealerTrack document then get sent to these institutions electronically?

A. The DealerTrack sends electronically to M&T Bank.

Q. Does anyone from the dealership get on the phone and call the banks and say, "Hey, I'm sending you over an application"?

A. No.

Q. It's computers that are doing it?

A. It's everything computers.

Q. If the application for the financing is accepted, approved, does someone call up the dealer and say, "Congratulations, you got approval" --

A. No, no.

Q. -- or does the computer let you know?

A. The computer send and mail this is

approved in the DealerTrack is got to be on a sign that say correct, it's like a check mark, like this, under the name of the "M&T." It say "M&T Bank," and then it say -- in green -- it says check mark. If this is not, it's gonna be "X."

Q. Would there be times that the DealerTrack would require additional information that is not contained on the DealerTrack application?

A. No. It's gonna be, gonna be different signs and clicking of the M&T and showing the structure for the deal.

Q. Other than the DealerTrack application in this case for Mr. Tuhin -- which is Exhibit I -- does the bank through the DealerTrack system review any other documentation coming from the dealership in order to approve or deny an application for credit?

A. No.

Q. And the information that is contained on the DealerTrack document comes from information that was placed on it by the

Mamdoh Eltouby

dealership; correct?

A. Correct.

Q. And under the terms of the dealer agreement, everything that M&T is supposed to see is supposed to be true and correct so that M&T can make an informed decision on whether to approve or deny the credit application; correct?

A. Correct. That's the reason we making the dealer, also the customer, sign the application.

Q. And that would evidence what?

A. He go through everything, every box, and see every box, and correct, and say correct and sign.

Q. Did Mr. Tuhin, when he saw you, ever state to you, "Hey, wait a second, someone covered up all those terms. I didn't see anything. I just signed the document blindly without looking at it"?

MS. LINDERMAYER: Objection to form.

A. No.

Q. Do you understand the question?

Mamdoh Eltouby

A. He never say this.

Q. To the best of your recollection or knowledge, do you know if Ms. Chowdhury or Mr. Gabrys ever made any accusations that anyone at the dealership covered up the DealerTrack information before they signed the documents?

A. No.

Q. Once the application is approved, the financing has been approved at that time?

A. Yes.

Q. Up to the point that the application is provided in the DealerTrack -- whether it was for Chowdhury or whether it was for Gabrys or Tuhin -- was M&T Bank involved in any of the discussions or negotiations or representations that the dealership makes to the consumer about the credit application?

A. No.

MR. GROSSMAN: Can I have this marked, please.

(Document on letterhead of DealerTrack referencing Simon Gabrys is marked as Defendant's Exhibit J for identification, as of this date.)

Q. One other question I wanted to ask you before I go on. After the application is approved for the financing, what happens then? Is the car given to the customer?

A. The customer, we explain him every term, and when he agree and we sign, give him the car and we put the lien for M&T Bank in the car, and it's done deal, you know. This is how many deals -- you'll see how many deals in the period when Planet Motor Car on this is, and how many problem happen. It's zero. Put it this way: Zero.

Q. Let me ask you this. One of the things we had talked about is there comes a point in time in the transaction where the aftermarket add-ons are discussed?

A. Yes.

Q. And you did testify that that's a way for the dealership to make some money; correct?

A. Yes. Aftermarket, after-sale, everybody knows in every dealership this is the way for making money.

Mamdoh Eltouby

Q. Did you, sir, to the best of your knowledge or anyone at your two dealerships ever tell Mr. Gabrys, Ms. Chowdhury, or Mr. Tuhin that in order to obtain financing from M&T Bank that they had to purchase aftermarket add-ons?

A. No way. No. We just only offer, offer to the customer. If the customer agree, he sign, and we offer him if you want to sell anything to the customer.

Q. If a customer says, "You know what, I don't want any add-ons. I want a bare-bones car," would any of your employees say, "You can't buy here, because the bank says you have to buy an add-on in order to get financing"?

A. No, never.

Q. There was some testimony that after the approval of financing by Santander that there would be some type of follow-up inquiry or discussion?

A. Yeah, this is with subprime.

Q. That's a requirement only for subprime loans?

A. Only for subprime.

Q. As far as you know, is this a requirement by the DMV or any other agency that every bank do that after approval of financing is given?

A. No.

Q. I will show you what has been marked as Exhibit J for identification, sir, and ask you if you have ever seen that document? That is PRFD000022 through and including 000025. Do you see that? Looking at 000024, do you have any belief or understanding that that is not Simon Gabrys's signature on that document?

A. He not sign in front of me. He sign probably in front of the F&I.

Q. Other than these lawsuits, has anyone ever come to you and said, "That's not Mr. Gabrys's signature. He didn't sign that voluntarily"?

A. No.

Q. This again is a DealerTrack document. Is this similar to Defendant's Exhibit I for Mr. Tuhin, in that they would

Mamdoh Eltouby

work the same way, they were electronically sent over to a number of banks?

A. Correct.

MR. SIMON: Gabrys was deposed in this case. Bruce Minsky was there. Were you there when Minsky deposed Gabrys? Did you attend?

THE WITNESS: No.

MR. SIMON: So you weren't there.

THE WITNESS: I was not there.

Q. I believe you testified yesterday or this morning that after the approval comes in, an interest rate is provided of what the bank is going to charge for the interest rate.

A. It's just only for subprime people.

Q. There was a discussion regarding the dealership being able to raise the interest one or two percent?

A. Oh, yes, yes.

Q. As far as you know, is that legal under New York law?

A. Yes.

Q. Do you know if any other

dealerships other than your dealership do it?
A. All the dealers.
Q. This is known to M&T Bank?
A. This is everybody knows. M&T Bank, everybody knows. And the M&T Bank, in the approval, they send you in a note, you can market no more than two, no more.
Q. If you go over two points, what happens?
A. It's going to be returned the contract right away.
Q. In addition to the DealerTrack application, is a copy of the retail installment agreement and the bill of sale ever sent over to the bank?
A. No. We printed this separate.
Q. Sorry?
A. We printed this separate, the contract. Not from the DealerTrack, from another program. ADAM system. A-D-A-M.
Q. Does there come a point in the transaction in which the bank, in this case, M&T Bank, sees the signed retail installment agreement?

A. No.

Q. What about with respect to the bill of sale?

A. No.

Q. It's just the DealerTrack documents that you send over to the bank?

A. I send the bill of sale and installment contract.

Q. If the DealerTrack is sent electronically, how is the retail installment agreement and the bill of sale sent to the bank?

A. Fax. And also overnight Federal Express.

Q. Other than those three documents, does the bank get anything else from the dealership with respect to the financing of any vehicle?

MR. SIMON: Note my objection to the form of the question.

A. No.

MR. SIMON: You're implying they're all sent at the same time.

MR. GROSSMAN: No.

Q. Let's start again. The first document that gets sent over to M&T Bank in the process of trying to finance an automobile is which document?

A. This is the DealerTrack application.

Q. And that is Exhibits I and J?

A. Correct.

Q. For Mr. Tuhin and Mr. Gabrys?

A. Correct.

Q. Once the financing is approved --

A. Yes.

Q. -- what gets sent over to them?

A. We send the bank the installment contract, bill of sale, and a copy of the DealerTrack, and signed already, and what else? The driver's license, I think.

Q. So based on those documents, the bank never gets to see the handwritten application from the customer?

A. No. We get this one.

MR. GROSSMAN: Let's mark this.

(Document entitled "Notice of Lien" on letterhead of New York State

Mamdoh Eltouby

Department of Motor Vehicles is marked as Defendant's Exhibit K for identification, as of this date.)

Q. Before I ask you a question, I want to show you what has been marked previously as Plaintiff's Exhibit 12 for identification. You had seen that earlier, sir?

A. Yes.

Q. That document is on Planet Motor Cars letterhead. Do you see that?

A. Yes.

Q. To the best of your knowledge, sir, did M&T Bank have any involvement in preparing or approving that document?

A. No.

Q. I show you what has been marked as Defendant's K for identification and ask you to take a look at that, sir.

A. It's note of the lien.

Q. That document you said is called what?

A. Note of lien.

Q. Who prepared that?

A. This is in website.

Q. Whose website?

A. From Motor Vehicle.

Q. The dealership prepares that?

A. No, we print it from the website of DMV and then he signed it. He acknowledged this is the car that have a lien from M&T Bank, and Mr. Tuhin also signed here.

Q. There's another name on that document, sir.

A. No.

Q. It says, "John DeSantos."

A. Where is it?

Q. "Signing for a corporation," in the middle, right above "Lien Information."

A. John DeSantos.

Q. Who is that?

A. This is the F&I title or something.

Q. The handwriting on this document, is it Mr. DeSantos or someone at the dealership, or is it Mr. Tuhin's?

A. Usually prepare the paper, the girl prepare, or the F&I. He write all the paper, and then Mr. Tuhin sign it.

MR. SIMON: What you just marked as Defendant's K was also marked as Exhibit N at the Tuhin deposition on 10/27/14.

MR. GROSSMAN: Thank you.

Q. I will show you what was previously marked as Exhibit 17 at the deposition on 3/30/15, sir. I will ask you to take a look at that document, sir.

A. DealerTrack.

Q. It's a DealerTrack document?

A. Application.

Q. Do you know whose name is on that?

A. This is Chowdhury.

Q. Is there a signature on that?

A. Yes.

Q. Did you see Chowdhury sign that document?

A. Yes.

Q. You did?

A. Mm-hmm.

Q. Do you have any reason to believe that that wasn't her when she signed the document?

MR. SIMON: Did you understand that question? He asked did you witness her signing that document?

A. I was there, you mean?

Q. Yes.

A. No, I was not there. But this is everybody, the rules for the finance, has to be signed, the application for the bank.

Q. Is one of the requirements at the dealership when they have these documents signed to take a copy of the driver's license of the person who signs the document?

A. Yes.

Q. So would Ms. Chowdhury's, Mr. Gabrys's and Mr. Tuhin's license have been copied at the time they signed the documents?

A. Sure.

Q. And that is done for what reason? Why is the license copied?

A. Because he cannot deny this is not his signature.

Q. One other question about the cameras. You said the hard drive erases every

Mamdoh Eltouby

eight days?

A. Yes.

Q. Did you also get disks or tapes for each day?

A. No. Because if any problem, usually any problem, we coming after two or three days, a week the mostly. Then I stop the -- I start them to tape or I start them to get the technician that he is going to get me a CD for this particular, you know, deal.

Q. So you would only burn a CD if there was someone who came in and said there was a problem; you wouldn't do it on a daily basis?

A. Correct.

Q. If no one came in, then every eight days the hard drive would be erased and gone over; correct?

A. Yes.

Q. You talked about a reserve account, sir?

A. Yes.

Q. How, if in any way, is M&T Bank involved with the reserve account?

Mamdoh Eltouby

A. No.

Q. Do they have any say in what --

A. They have nothing to do. It's just only market the reserve, only two point. Either you give it to customer or you not give it to the customer, you know.

Q. Does M&T Bank ever have any input in what you should do with --

A. No.

Q. -- any of your money?

A. No.

Q. Do you remember M&T Bank ever contacting you directly or through Jim Erickson, telling you any problems that anyone had with your dealership other than these lawsuits?

A. No. If any problem, always Jim Erickson coming to me and tell me the problem and I buy the deal back. This is rarely an error from us.

MR. SIMON: You have to listen to the question. He asked did you have any problems vis-a-vis any other customers from M&T, other than the ones in this lawsuit.

THE WITNESS: No.

MR. SIMON: Gabrys?

THE WITNESS: No.

MR. SIMON: Chowdhury and Tuhin?

THE WITNESS: No.

MR. SIMON: Did you understand the question?

THE WITNESS: Yes.

MR. SIMON: Why don't you give your answer now. He asked did you have any other problems with M&T Bank.

THE WITNESS: No.

MR. SIMON: Other than those three?

THE WITNESS: No.

MR. SIMON: Listen to the questions carefully. I'm sorry to interrupt, counselor.

MR. GROSSMAN: All right. I'm trying to expedite.

MR. SIMON: You must listen to the questions.

Q. As far as you know, sir, did M&T

Mamdoh Eltouby

Bank ever tell any of your finance people at any time how and what they could say to customers in order for them to try and buy a car at any of your dealerships?

A. No.

Q. Did you, sir, ever speak to anyone in the finance department?

A. No.

Q. Do you know if anyone at your company ever spoke to anyone in the finance department?

A. No.

Q. Your liaison was through Jim Erickson?

A. Yes. Sometimes only F&I would rehash the deal, that's it.

Q. You had mentioned that you purchased back two loans from M&T, but you never told M&T about that -- correct -- why you did it? One from Pennsylvania and one from Long Island?

A. Yes.

Q. But you never told them why you did it; you just did it?

Mamdoh Eltouby

A. I just did it to avoid any problems.

Q. But you never told M&T; you just went ahead and did it?

A. No.

Q. M&T didn't tell you how to do it?

A. No.

Q. You did it --

A. By myself.

Q. When these finance documents were being gone over and signed, sir, was Nada ever in the room?

A. No.

MR. LANE: Off the record.

(A discussion is held off the record.)

Q. If Mr. Estrada stated that every single finance deal he did, Nada stood to the left of him on each deal; is that a correct statement?

MS. LINDERMAYER: Objection to the form, no basis for knowledge.

A. No.

Q. Did you ever tell Nada she had to

stand to Mr. Estrada's left during every finance transaction?

MS. LINDERMAYER: Objection to form.

A. He -- most of the time they tell her, "Listen, they speak Spanish, and this is my relative," or something. And they speak Spanish all the time with the people, and she not understand anyhow. Then she get out.

Q. Did M&T Bank ever contact you directly, sir, about these lawsuits?

A. Contact me?

Q. Yes. Other than through Mr. Erickson, anyone else?

A. No.

MR. SIMON: You mean, apart from the repurchase requests on these lawsuits?

MR. GROSSMAN: Yes.

MR. SIMON: You said, did they contact him. Do you mean, apart from those letters?

MR. GROSSMAN: Apart from the letters.

Mamdoh Eltouby

Q. To the best of your knowledge, did M&T Bank undertake any wrongdoing with respect to the deal with Mr. Tuhin?

A. No.

Q. To the best of your knowledge, sir, did M&T Bank do anything wrong with respect to the deal with Mr. Gabrys?

A. No.

Q. To the best of your knowledge, did M&T Bank do anything wrong with respect to the deal with Ms. Chowdhury?

A. No.

MR. GROSSMAN: Let's mark this as the next exhibit.

(Document entitled "Retail Installment Contract," Bates-stamped PRFD000020 and 000021, is marked as Defendant's Exhibit L for identification, as of this date.)

(Document entitled "Retail Installment Contract," Bates-stamped PRFD000042 and 000043, is marked as Defendant's Exhibit M for identification, as of this date.)

Mamdoh Eltouby

MR. SIMON: For the record, the retail installment contract had previously been marked as Exhibit C -- Defendant's Exhibit C -- at the deposition of Tuhin.

Q. Before we get to the exhibits, let me ask a couple of questions. Mr. Eltouby, the theft deterrent protection, the extended service contract or warranty, these aftermarket add-ons --

MR. SIMON: "After-sale" add-ons.

Q. Are these after-sale add-ons something that M&T Bank would get involved in with the customer in any way?

A. No. M&T have nothing to do with it.

Q. Looking at what has been previously marked as Defendant's Exhibit C from the deposition on October 27, 2014, do you recognize what that document is?

A. Yes. This is the installment contract.

Q. It has a logo at the top left?

A. Yes.

Mamdoh Eltouby

Q. Is that M&T?
A. M&T Bank.
Q. Does every bank have a similar, or does each bank have different --
A. No. M&T Bank have this kind of contract only.
Q. Looking at that document, sir, do you see a signature on there from the customer?
A. Yes.
Q. Did you see the customer sign that?
A. Yes.
Q. That is the customer's signature?
A. Correct.
MS. LINDERMAYER: Objection to the form.
Q. I'm going to show you --
MR. SIMON: Can I clarify? Tuhin identified a signature. Did you ask if he witnessed Tuhin signing it?
MR. GROSSMAN: Yes.
Q. I'm going to show you what has been labeled as -- and this is small, sorry -- Defendant's Exhibit L for identification.

MR. SIMON: Listen very carefully.

Q. It's PRFD000020 and 000021. You may have to squint. Do you recognize the form of that document?

A. Yes.

MR. SIMON: That's L?

MR. GROSSMAN: Yes.

Q. What is that document?

A. Installment contract also.

Q. Do you know who the customer was on that?

A. It look like this is Mr. Simon Gabrys.

Q. Did you witness Mr. Gabrys signing that document?

A. I was not in the room when he was signing.

Q. Did anyone ever tell you that he ever made any statements that he never signed that document?

A. No.

Q. Were you ever advised that he had ever made any complaints that the terms of that document were covered up when he signed it?

Mamdoh Eltouby

A. No.

Q. Did Mr. Gabrys ever contact you and say, "Hey, I signed a document where the terms were covered up"?

A. Never.

Q. There was some discussion about refinance and coming back in four months or eight months. Is there a reason that someone would refinance an auto loan?

A. They have subprime, a 400 score or 500 score, and the subprime bank they take advantage and they give them a high rate -- it's 24 percent, you know. Until they straighten the, you know, the account, straighten the scores, pay on time, pay everybody.

Q. Would the discussions with the customers about coming back to refinance be only with the subprime customers?

MS. LINDERMAYER: Objection to the form.

Q. Do you understand the question?

A. What's this?

Q. She objected. Did you understand

the question? If not, I'll rephrase it.

A. Ask it again.

Q. Would people at the dealership discuss refinancing with all customers of the dealerships, or only subprime customers?

MS. LINDERMAYER: Objection to the form.

Q. Do you understand the question?

A. Subprime.

Q. Did M&T Bank ever issue or grant any type of subprime loans?

A. No.

Q. When someone wants to refinance, do they have to refinance at the dealership?

A. Not really.

Q. Could they have gone to a credit union or a bank and tried to refinance?

A. Credit union. E-loan-dot-com. So many websites on the internet.

Q. By refinancing, would there be any detriment to the dealership if someone refinanced their loan?

A. No, it's no benefit for us. This is just only he lower his payments.

Mamdoh Eltouby

Q. Did M&T Bank ever tell you -- the dealership -- that they have to tell people they can't refinance M&T loans?
A. No.
Q. When a customer walked into either of the dealerships, was there any advertising for M&T Bank in the dealership saying that M&T was one of the lenders for the dealership?
A. No.
MR. GROSSMAN: I have no further questions at this time. I'm turning it over to Mr. Lane.

CONTINUED EXAMINATION BY MR. LANE:
Q. I have to follow up on some questions after Mr. Grossman. I'm going to put Defendant's Exhibit K back in front of you. Mr. Grossman asked you about the signature of the F&I representative on this document. You had identified it as the --
A. It's no signature for F&I, it's a name somebody write there.
Q. What is the name?
A. John DeSantos.

Mamdoh Eltouby

Q. Do you recognize that name?

A. You know, "J" -- for Estrada, sometimes he write his name "John DeSantos."

Q. And you knew that he would sometimes write his name as John DeSantos?

A. I don't know.

Q. Did you know that he would write his name as John DeSantos?

A. No. I hear only when he speak with one of the Spanish people and tell him, "Oh, my name is John DeSantos."

Q. Did you ever see documents signed by Julio Estrada while he was at the dealership that used the name, "John DeSantos"?

A. No.

Q. You never saw a document --

A. No.

Q. -- that had that?

A. No.

Q. Is this the first time that you saw a document from the dealership that has "John DeSantos" on it?

A. Yes.

Q. Today?

Mamdoh Eltouby

A. Yes.

Q. After M&T Bank funds a financing agreement, are you aware that M&T Bank will take steps to enforce that agreement if they need to in the future?

MR. GROSSMAN: Objection as to form.

Q. Once M&T gives you money for a loan contract, if a customer stops making payments on that loan contract, are you aware that M&T Bank will take steps to collect money from the customer under that loan contract?

A. From me?

Q. No, from the customer.

A. You got to ask M&T Bank.

Q. Are you aware?

A. No.

Q. You don't know?

A. I don't know anything.

Q. If I'm a customer and I sign a loan contract with your dealership --

A. Yes.

Q. -- and you sell it to M&T, and M&T gives you the money for the contract --

Mamdoh Eltouby

A. Correct.

Q. -- if I stop making payments on that contract, what are some things that M&T might do?

MR. BRENER: Objection to form.

A. It's not my business.

Q. Do you have any idea what M&T might do?

A. I have no idea what they do.

Q. Are you aware that M&T might demand that I make payment, or they will report late payments to my credit report?

A. I don't know.

Q. Are you aware that M&T would threaten to repossess the vehicle if I didn't make the payments?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. In your 30 years of experience as a used car dealer, you are not aware of what steps banks may take to collect money under loan agreements?

A. Every bank is different.

Mamdoh Eltouby

Q. But you don't have a general sense of what a bank will do?

A. I have no idea. Could be banks sometimes write off. Could be the bank repossess the car. It's too many things. I don't know.

Q. So it's possible that a bank could decide to just write off --

A. It's possible.

Q. -- the loss?

It's possible that a bank could write off the loss of you stopping payment?

A. Correct.

Q. It doesn't have to be M&T Bank; any bank?

A. Any bank.

Q. So the bank that took assignment could write off the loss if I stopped making payments?

A. This is saying in general?

Q. In general.

A. The bank take a loss, yes.

Q. They could write off the loss --

A. They can write off the loss.

Mamdoh Eltouby

Q. That's one option?

A. Yes.

Q. Could they threaten me with repossession of the vehicle?

A. Could be.

Q. Could they make a report to my credit report that I'm now late on my payments?

A. Correct. Could be.

Q. So you do have some awareness that if a customer stops making payments under the loan agreements, the bank that took the loan will take some actions against the customer?

A. Correct.

Q. Okay, thank you.

In general, if the Better Business Bureau contacts one of the dealerships that you have worked at about a consumer's complaint, do you have a policy for handling Better Business Bureau complaints?

A. We always answer the complaint in writing.

Q. You always answer the complaint in writing?

A. In writing.

Mamdoh Eltouby

Q. Is that true at New York Motor Group? Did New York Motor Group always answer Better Business Bureau complaints in writing?

A. In writing, yes.

Q. Were you the person who reviewed every Better Business Bureau complaint about New York Motor Group?

A. No, I think the sales manager.

Q. Mohamed?

A. Dani -- I don't know how to spell it. Could be D-A-N-I. Mohamed, he don't know how to write English.

Q. So who was responsible for responding to the Better Business Bureau?

A. It was Dani or Angel.

Q. So Dani or Angel would respond to the Better Business Bureau?

A. Yes.

Q. But wasn't there a time when Dani did not work at New York Motor Group?

A. There was a time. Yes.

Q. And Angel stopped working at New York Motor Group after December of 2012; correct?

A. Yes. After, what's his name, Julio.

Q. After Julio started, Angel left?

A. Yes.

Q. Who was the sales manager after Angel left?

A. I not remember. But Dani, you know, a couple of them come in.

Q. I just want to be clear. At New York Motor Group, generally the sales manager reviewed and responded to Better Business Bureau complaints?

A. Yeah. They take care of any problem that come in.

Q. Were you ever made aware of Better Business Bureau complaints?

A. Yeah, they come in and tell me. And the Better Business Bureau was good, and they listen to the complainer and they listen also to both of them, and then they deciding, you know, they say this is very good. Because the discussion was with the complainer and with the dealership. And they see this is always the complainer liar, you know.

MR. LANE: I don't have any further questions.

(A discussion is held off the record.)

CONTINUED EXAMINATION BY MS. LINDERMAYER:

Q. Mr. Eltouby, did you watch the video taken of Mr. Tuhin signing the documents at your dealership?

A. No.

Q. Were you in the room when he signed those documents?

A. No. I say before I only watching the tape of the customer complain. The customer complain after one month.

Q. Well, actually, he complained two days later.

A. No.

Q. That's fine. That's not responsive to my question.

A. That's not true.

MS. LINDERMAYER: Mr. Eltouby, all you have to do is answer the question I'm asking you. I understand that

Mamdoh Eltouby

perhaps you weren't made aware of it, but he did complain to your daughter. Now let's go back to what I was saying.

MR. SIMON: Just note my objection to anything that is not an inquiry.

MS. LINDERMAYER: Okay. Can you read back the answer, whether he answered the question about whether he was in the room with them.

(The record is read back by the reporter.)

Q. So were you in the room with Mr. Tuhin when he signed the documents?

A. No.

Q. Okay. Earlier you testified that that was his signature on the form. How would you know that?

A. Because the police officer coming when Mr. Tuhin come in, and he pull his driver license, and ask him of every signature, "Is this your signature?" He asking him. He say "Yes." He admit for all the signature that he signed.

Q. Did you testify earlier that you

saw him sign the document?

A. Excuse me, I explaining exactly --

Q. I heard your answer.

A. One second. I explaining exactly.

Q. Sir, you answered my question.

MR. SIMON: Just answer her question.

MS. LINDERMAYER: He did answer my question, and I just wanted to clarify.

Q. Did you testify earlier that you saw Mr. Tuhin sign the retail installment contract?

A. I -- I --

Q. I'm asking you: Did you testify earlier --

A. No, I never testified.

Q. -- that you saw Mr. Tuhin?

(The record is read back by the reporter.)

MS. LINDERMAYER: Please wait for me to finish the questions so we can have a clear record.

Q. Did you testify earlier that you saw Mr. Tuhin sign the retail installment contract?

A. No.

Q. If you had provided that testimony, would that be incorrect?

A. [No response.]

Q. If you testified before that you saw him sign the contract, would that be incorrect?

A. Incorrect.

Q. You said earlier that Mr. Tuhin had friends with him in the room when he signed the contract. What is the basis for your knowledge of that?

A. This is the salesman, which is Dewan -- this is the one that interpret, is speaking Bengali. He saw him when he bringing another guy have more knowledge about cars and about finance.

Q. I'm asking how do you know that? Are you saying that Dewan told you?

A. Dewan. Dewan told me.

Q. So you don't actually know that; someone told you that?

A. Dewan told me that.

Mamdoh Eltouby

Q. But you don't actually know that he was in the room with people, with friends?

A. I was not with them.

Q. There are six plaintiffs in the case. Do you know how many of them speak only Spanish?

A. I have no idea.

Q. Does Mr. Tuhin only speak Spanish?

A. No. Bengali.

Q. Does Mr. Estrada speak Bengali?

A. No.

Q. You said earlier that Mr. Tuhin complained to you that when you did finally speak with him at the protest, he told you that the money is not shrinking. Do you remember providing --

A. No, I'm not sure.

Q. I have here that you said something like he was complaining that the money was not shrinking, the payments were not shrinking. Is that what you testified to?

A. No, no, no. This is when you -- when you, for example the $3,000 installment contract, he can already get the money back, you know. And this money is not go back to him. Go back to M&T Bank, you know. But the payment is still the same.

Q. Did he tell you that he thought his payments would get lower, and that's what he understood?

A. No. The term is getting lower, not the payments.

Q. I'm just asking what Mr. Tuhin told you. Did Mr. Tuhin tell you that he believed his payments were going to become lower?

A. No.

Q. At the 7-Eleven, at the second protest, you said you offered to give him about $4,000 or $5,000?

A. I did offer him this to, you know, return the contract -- the installment contract -- for him, and I give him some money also to keep the car, to keep the loan and this he going to be happy with, you know.

Q. What was the offer that you gave him at the 7-Eleven on the second day of the protest?

Mamdoh Eltouby

A. I tell him, "I return for you the installment contract, which is $3,000."

Q. I'm sorry, what?

A. Installment contract.

Q. The installment contract?

A. Yes. Not installment, I'm sorry, extended warranty.

Q. Okay.

A. Extended warranty was $3,000. Gonna be void this, and I help him with a couple dollars also with money.

Q. How much money?

A. I give him -- also I tell him, "I give you also from my pocket, $2,000."

Q. So was that the only offer that you made?

A. I make it offer this or --

Q. I'm sorry, was that the only offer you made?

A. No.

Q. Okay. What was the other offer that you made to him?

A. Also I tell him, if you don't want this, I take the car from you and put it in my dealership and I sell it for you and I pay off the M&T Bank, and you go out of the deal.

Q. And that is only if you were able to sell the car?

A. We are selling cars.

Q. I'm just asking: Would you get him out of the M&T deal only if you were able to sell the car? Is that what the offer was?

A. My business only selling cars.

Q. I'm just asking you if --

A. Yes.

Q. -- your offer to Mr. Tuhin --

A. Yes.

Q. Okay. And ended up selling the car for less than the amount of the loan to M&T?

A. I don't think this is selling for less.

Q. I just want to know what the offer you made to Mr. Tuhin allegedly was?

A. I don't know. I tell him, I'm helping you selling the car and pay off the loan. That's it.

Q. Okay, but if you were not able to

sell the car for the amount of the loan --

A. There's not such "if."

MR. SIMON: Note my objection about what if.

Q. Mr. Eltouby, you're not answering my question. What I'm asking you is the offer that you made to Mr. Tuhin that day. You said that you offered to sell the car and use that money to pay off the M&T loan. If you were not able to sell the car for the full amount of the M&T loan, what would you have done? What was the offer in that situation?

MR. SIMON: Note my objection. I don't know if that was even discussed. Did you discuss that?

MS. LINDERMAYER: Richard, he just testified that he said that.

Q. Mr. Eltouby, if I'm asking you a question that doesn't make sense, please let me know and I can rephrase it.

MR. SIMON: Your question is: What if he couldn't realize enough in the sale to satisfy the loan?

MS. LINDERMAYER: I'm trying to

understand what the offer was.

MR. SIMON: I think he's answered it. You can answer again.

A. This is "if," and I cannot answer for you for something that's calling "if."

Q. Okay, so it was an offer that was --

A. This mean you want to drag me as something this is I not say it.

Q. So when you made the offer to Mr. Tuhin, you had not contemplated what would happen if you were not able to sell the car for the full amount; is that right?

A. I tell him already I help him, you know. He's a Muslim guy like me, and I tell him I help him.

Q. I hear you saying that, and I'm just trying to understand what you mean by "Help him."

A. To get him out of the loan.

Q. Did you ever -- sir, would you mind not checking your phone while we're in a deposition?

A. I not checking the phone, but the

bank is --

MS. LINDERMAYER: Okay, we're really almost done, Mr. Eltouby. I'll wait.

Q. At some point you were sued by Mr. Eltouby -- by Mr. Tuhin, excuse me.

A. Can I --

MR. SIMON: Let her just finish. We're almost done.

THE WITNESS: I have an important call.

MR. SIMON: Give her a couple more questions.

MS. LINDERMAYER: I'm finishing the questions I have left.

MR. SIMON: Go on.

Q. Did you ever offer to help Mr. Tuhin, did you ever convey an offer to help Mr. Tuhin through your attorney? Did you ever make an offer to help Mr. Tuhin, except for the date of the protest?

A. Except for the? Yeah, I tried to help negotiate with him, but --

Q. Except for the day of the protest,

Mamdoh Eltouby

I'm asking.

MR. SIMON: She's asking --

MS. LINDERMAYER: Richard, I can clarify it myself.

Q. Except for the day of the protest, did you ever make an offer to relieve Mr. Tuhin from his loan?

A. After this?

Q. Except for the day of the protest, except for that second day.

A. I didn't see him. He contacted me. I believe you -- this was the lawyer, or somebody else.

Q. I'm asking the questions here.

MR. SIMON: Just answer the questions.

MS. LINDERMAYER: Richard, it's okay, I've got it. We don't have a lot of time.

A. No.

Q. Okay, thank you.

As a businessman, if someone comes to your business and is defrauded by someone who works for your business, do you believe that you're responsible for that?

A. We not frauded nobody.

MR. SIMON: I object.

Q. If you understand the question, you can answer.

A. We not frauded nobody.

Q. I'm just asking if -- if.

A. There's no such thing, "if."

Q. You know what, this is not a metaphysical conversation, Mr. Eltouby. I'm asking you a question, and you need to answer it. Lance -- the attorney from M&T -- asked you many conditional questions using the word "If," and there was not a problem there.

I'm asking you as a businessman, if someone comes to your business and is defrauded by someone who works for you, do you believe you are responsible for fixing that?

MR. SIMON: Note my objection to the form of the question.

Q. You can answer if you understand the question, and if you don't understand it, I can rephrase it.

A. No, I not understand what you

mean.

Q. As a businessman, if someone comes to your business and is defrauded there by someone who works for you, do you believe that you are responsible at all?

MR. SIMON: Note my objection to the form. Can you answer this?

MS. LINDERMAYER: Richard --

A. I cannot answer this, because you say "frauded." We're not frauded anybody.

Q. Right now you're speaking to me, Mr. Eltouby. I'm saying if it happens that someone came to your business and was defrauded by someone who worked for you -- they were lied to, and lost money as a result -- do you believe as a businessman that you would have some responsibility?

A. My responsibility only --

Q. It's a yes or no question.

A. If the customer is paying some money and somebody take from him the money and run from the business, my business, I give him the money back.

Q. So are you saying that you would

only be responsible if someone stole money?

A. Stole money from a customer.

Q. But if they defrauded them in some other way, you would not be responsible?

A. How defrauded?

Q. I'm just asking yes or no? Yes or no?

MR. SIMON: Are you asking him as a matter of law or as a matter of conscience? Make it clear.

MS. LINDERMAYER: As a matter of belief, just what he knows.

A. Why you trying to put in my mouth frauded?

MR. SIMON: If you can answer the question, just answer it.

A. We not frauded nobody.

Q. Sir, you're not answering my question.

A. We not fraud nobody.

Q. And I'm going to sit here all day until you answer my question. You said before that if someone stole money, that you would feel responsible. Does that mean if someone was defrauded in a way that did not involve a theft of money, that you would not feel responsible?

A. This is frauded, the same like theft; right?

Q. No. So if someone was lied to at your dealership and ended up with a loan that they never agreed to, would you feel that it was your responsibility?

MR. SIMON: Note my objection to the form. Can you answer that?

THE WITNESS: No.

MR. SIMON: He can't answer it.

MS. LINDERMAYER: That is not an acceptable answer. You either don't understand it --

MR. SIMON: Well, I'm sorry. We're leaving. Do you have any more questions?

MS. LINDERMAYER: Absolutely not.

Q. This is a very straightforward question, and I don't see what the problem is.

A. You telling me frauded. I not frauded.

Q. Let me rephrase it then. If someone comes to your dealership and one of the people who works at your dealership lies to them --

A. Lying?

Q. Yes, lies to them, and they end up with a loan that they did not agree to; do you believe that you're responsible?

A. The customer only not sign and say, "No, I don't want take the loan."

Q. This is a yes or no question, Mr. Eltouby.

A. "I don't want take the loan" -- sure, he gonna go walk free, nobody can tell him anything.

Q. Mr. Eltouby, this is a yes or no question.

MR. SIMON: They can finish this in my absence. They can keep going on. I'm leaving. I'm out of here. I'm history.

Q. Mr. Eltouby, this is a yes or no question.

A. My lawyer is leaving.

MS. LINDERMAYER: Richard --

MR. SIMON: Bring it up to the magistrate.

MS. LINDERMAYER: I absolutely will bring it up to the magistrate that you have left less than seven hours into this deposition, while I'm in the middle of asking your client a question. This is outrageous. I will absolutely tell Judge Gold.

Please let the record note that Mr. Simon just got up and left. Are you sitting back down?

MR. SIMON: I'm getting that rubber band.

MS. LINDERMAYER: Okay. I will make a record as soon as he leaves.

MR. SIMON: Make a note it's seven minutes to 6:00.

MS. LINDERMAYER: Please let the record note that at 5:52, Richard Simon indicated that he would not continue sitting for this deposition, got up, grabbed his things, and is in the process of leaving the room with his client also with him, and as a result, we are not able to finish this deposition.

MR. SIMON: Okay. Have a nice day.

(Time noted: 5:54 P.M.)

A C K N O W L E D G M E N T

STATE OF NEW YORK)

: Ss

COUNTY OF)

I, MAMDOH ELTOUBY, hereby certify that I have read the transcript of my testimony taken under oath in my continued deposition of April 28, 2015; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

____

MAMDOH ELTOUBY

Signed and Subscribed to before me, this ____ day of _______________, 2015

____

Notary Public, State of New York

I N D E X

WITNESS		PAGE
MAMDOH ELTOUBY		
Continued Videotaped Examination By:		
	MR. LANE	299, 549, 657
	MS. LINDERMAYER	464, 665
	MR. BRENER	487
	MR. GROSSMAN	574

oOo

EXHIBITS

PLAINTIFF'S	DESCRIPTION	PAGE
6	Document entitled "Vehicle Service Contract," referencing customer Gaganmeet Singh Bains	304
7	Multipage document entitled "Consent Order," referencing Gaganmeet Singh Bains	315
8	Document with heading of New York Motor Group, referencing Anwar Alkhatib as buyer, dated 12/18/12	331
9	Copy of the first page of the retail installment contract for Boris Freire that Mr. Freire retained a copy of personally	358
10	Photocopy of official check in the amount of $7,500	362
11	Photocopy of advertisement for a Honda Odyssey	381
12	Document on letterhead of Planet Motor Cars	390

INDEX CONTINUES...

EXHIBITS

PLAINTIFF'S	DESCRIPTION	PAGE
13	Vehicle service contract on letterhead of AUL	397
14	Document with heading of Manheim.com, entitled "Buyer Vehicle History Details"	408
15	Document referencing Boris Freire and Miriam Osorio	417
16	Document on letterhead of New York Motor Group in regard to transaction with Shahadat Tuhin	472
17	Document on letterhead of DealerTrack regarding Shahadat Tuhin	474
18	Receipt document referencing NY Motor Group in regard to transaction with "Zheng Dong"	557
19	Contract document referencing NY Motor Group in regard to transaction with "Zheng Dong"	558

DEFENDANT'S	DESCRIPTION	PAGE
A	Document with heading of Santander Consumer	502
B	Multipage document, the top page being a letter on letterhead of LeClair Ryan, dated March 14, 2014	545
C	Letter on letterhead of LeClair Ryan, dated June 23, 2014	546

(Continued...)

DEFENDANT'S	DESCRIPTION	PAGE
D	Document entitled "Dealer Agreement"	583
E	Document entitled "Dealer Agreement"	583
F	Document on letterhead of M&T Bank to Planet Motor Cars, dated February 4, 2014	591
G	Document on letterhead of M&T Bank, to New York Motor Group, dated February 4, 2014	592
H	Document on letterhead of M&T Bank, dated November 20, 2013	592
I	Document on letterhead of DealerTrack, referencing Shahadat Tuhin	620
J	Document on letterhead of DealerTrack, referencing Simon Gabrys	633
K	Document entitled "Notice of Lien" on letterhead of New York State Department of Motor Vehicles	640
L	Document entitled "Retail Installment Contract," Bates-stamped PRFD000020 and 000021	651
M	Document entitled "Retail Installment Contract," Bates-stamped PRFD000042 and 000043	651

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DOCUMENTS AND/OR INFORMATION REQUESTED

DESCRIPTION	PAGE
BY MR. LANE:	
Insert full name and contact information for Kevin, the salesperson at New York Motor Group who spoke Chinese	343
Insert Angel Santiago's contact information	344
Insert contact information for Mohamed, the sales manager at the dealership	344
Produce copies of any piece of paper or files retained by the dealership on any person who worked for them, including a personnel file, contact information, Social Security numbers, IRS papers, performance reviews and proof of payment, for every employee who worked at New York Motor Group between 2010 and the present	345
Insert contact information for the accountant identified herein as Ahmed Youssef	349
Insert name and contact information for the payroll company that processed payroll for New York Motor Group; if not able to provide that, defendant is requested to authorize Mr. Youssef to provide name of the payroll company	350
Produce all bank records for New York Motor Group, and to the extent that Mr. Eltouby has control over it, provide all bank records for Planet Motor Cars from 2010 to the present	368
Insert the amount of salary that Mr. Eltouby drew from Planet Motor Cars when he worked there, including dates that he took that salary	375

(Continued...)

DOCUMENTS AND/OR INFORMATION REQUESTED

DESCRIPTION	PAGE
Insert amount of salary Mr. Eltouby drew from New York Motor Group	376
Provide copies of all contracts signed by either New York Motor Group or Planet Motor Cars with AUL for service contracts regarding any customer from 2010 to the present	405-406
Produce copies of the contracts that New York Motor Group or Planet Motor Cars had with any vendor of after-sale products as identified by Mr. Eltouby, regarding any customer from 2010 to the present	405-406
Insert name of the company that maintained the camera system described herein at New York Motor Group	441
Insert name and contact information of landlord of 60-20 Northern Boulevard, where New York Motor Group was previously in operation	450

BY MS. LINDERMAYER:

DESCRIPTION	PAGE
Insert name of consumer from Pennsylvania as described herein, whose loan Mr. Eltouby testified was bought back by the dealership from M&T Bank	468

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C E R T I F I C A T E

STATE OF NEW YORK)
) Ss:
COUNTY OF NEW YORK }

I, MEDEA EDER, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That MAMDOH ELTOUBY, the witness whose continued examination is hereinbefore set forth, was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of May 2015.

____
MEDEA EDER

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$10,000 [2] - 392:17, 603:4
$12,000 [5] - 329:24, 392:21, 602:8, 602:19, 602:25
$13,000 [2] - 334:15, 557:15
$13,995 [2] - 387:7, 388:13
$14,995 [7] - 381:22, 384:24, 385:3, 416:3, 416:16, 416:24, 417:4
$15,000 [2] - 381:22, 397:8
$15,600 [1] - 412:13
$15,950 [2] - 412:14, 414:15
$17,000 [1] - 416:16
$17,500 [4] - 334:11, 385:23, 385:24, 385:25
$2,000 [4] - 392:23, 416:15, 416:16, 671:15
$200 [3] - 333:7, 336:22, 336:23
$22,000 [1] - 603:22
$22,700 [1] - 602:23
$22,795 [1] - 330:12
$25,000 [1] - 474:5
$3,000 [14] - 329:25, 330:11, 401:5, 401:6, 401:8, 401:9, 401:13, 401:14, 401:15, 615:7, 615:9, 669:24, 671:3, 671:10
$30,000 [1] - 380:20
$350 [1] - 412:14
$4,000 [1] - 670:17
$5,000 [1] - 670:17
$500,000 [1] - 453:11
$6,000 [2] - 380:22, 380:23
$6,500 [1] - 476:10
$60 [2] - 456:19, 457:19
$600 [1] - 605:3
$7,500 [2] - 362:16, 685:20

'

'13 [2] - 569:14, 577:20
'14 [4] - 569:13, 569:14, 570:19, 577:20

0

000003 [1] - 584:4
000007 [2] - 584:3, 625:11
000009 [1] - 625:11
000010 [1] - 593:23
000011 [1] - 593:23
000021 [3] - 651:18, 654:3, 687:20
000024 [1] - 636:13
000025 [1] - 636:12
000038 [1] - 593:25
000039 [1] - 593:25
000043 [2] - 651:23, 687:22
00008 [1] - 593:21
00009 [1] - 593:21

1

1 [3] - 295:5, 297:3, 298:4
10 [5] - 362:14, 362:17, 363:17, 363:18, 685:20
10/26/13 [2] - 307:14, 310:5
10/26/2013 [1] - 308:12
10/27/14 [2] - 600:18, 643:6
100 [5] - 310:10, 355:12, 421:2, 421:15, 590:8
10007 [1] - 297:15
10016 [1] - 296:24
10022 [1] - 298:16
10279 [1] - 297:21
10570 [1] - 297:5
10977 [1] - 298:6
1099 [2] - 352:10, 352:11
1099s [1] - 352:15
10:05 [1] - 296:19
11 [5] - 316:9, 381:17, 381:19, 381:23, 685:21
112 [1] - 298:5
11241 [1] - 297:10
11377 [2] - 596:3, 597:11
11432 [1] - 594:8
11746 [1] - 495:2
11747 [1] - 299:6
11754 [1] - 298:11
12 [6] - 390:9, 390:12, 390:14, 390:19, 641:7, 685:23
12/18/12 [2] - 331:23, 685:16
13 [5] - 397:25, 398:10, 398:20, 399:2, 686:4
13,995 [1] - 386:6
13-CV-02337 [1] - 295:4
13-CV-5643 [1] - 295:8
13-CV-7290 [1] - 295:18
13-CV-7291 [1] - 295:13
14 [9] - 408:16, 410:3, 411:4, 545:23, 595:25, 596:23, 597:2, 686:5, 686:22
14,995 [1] - 385:20
14-CV-2980 [1] - 296:3
14-CV-2981 [1] - 296:7
15 [14] - 417:25, 418:4, 419:9, 425:5, 425:6, 425:10, 425:15, 425:21, 425:22, 427:24, 428:4, 428:9, 428:13, 686:7
15th [1] - 690:20
16 [14] - 297:10, 472:22, 472:24, 473:2, 476:23, 477:8, 619:22, 620:10, 620:15, 623:9, 624:13, 624:24, 627:2, 686:9
160-14 [2] - 488:10, 594:7
161-10 [1] - 307:9
16th [1] - 298:16
17 [9] - 474:10, 474:13, 474:18, 477:7, 625:21, 626:2, 626:9, 643:9, 686:11
178 [1] - 299:5
18 [7] - 366:13, 415:19, 423:24, 557:22, 558:2, 558:10, 686:13
19 [5] - 558:5, 558:7, 560:14, 561:20, 686:15
192 [1] - 296:23
1978 [1] - 572:16
1989 [1] - 451:17
1998 [1] - 487:24
1:35 [1] - 486:25

2

2 [5] - 295:10, 297:9, 297:14, 297:19, 298:9
2/18/2013 [1] - 364:19
2/19/2013 [1] - 366:17
20 [5] - 456:24, 592:8, 597:8, 597:13, 687:10
20/18/2013 [1] - 364:19
200 [1] - 390:5
2000 [1] - 451:17
2001 [4] - 451:16, 452:4, 457:25, 501:3
2002 [1] - 501:4
2003 [1] - 501:4
2004 [5] - 585:11, 585:12, 586:2, 586:5, 586:18
2005 [1] - 488:24
2010 [11] - 345:12, 346:3, 368:9, 370:10, 370:25, 407:3, 572:16, 688:12, 688:21, 689:7, 689:10
2012 [6] - 452:6, 461:17, 463:9, 586:14, 586:19, 663:24
2013 [53] - 307:15, 309:25, 310:9, 311:15, 342:21, 366:13, 417:15, 421:17, 423:24, 432:12, 432:15, 432:16, 433:20, 435:12, 435:13, 435:16, 437:8, 437:25, 440:3, 444:2, 446:3, 446:4, 446:7, 448:5, 452:7, 464:23, 465:4, 465:12, 465:16, 465:25, 466:3, 467:14, 470:10, 470:18, 471:20, 488:8, 557:25, 567:16, 569:13, 569:17, 569:18, 570:19, 577:13, 577:14, 577:19, 577:21, 578:6, 592:8, 597:8, 597:13, 598:4, 624:7, 687:11
2014 [28] - 316:9, 353:24, 353:25, 545:23, 546:3, 552:20, 553:4, 564:13, 569:9, 569:12, 570:17, 577:13, 577:14, 577:19, 578:6, 591:23, 592:4, 594:9, 595:16, 595:25, 596:23, 597:2, 629:9, 652:20, 686:22, 686:23, 687:7, 687:9
2015 [5] - 295:22, 296:18, 684:11, 684:21, 690:20
212 [1] - 296:25
22 [2] - 471:20, 585:12
2220 [1] - 297:21
23 [2] - 546:3, 686:23
233 [1] - 297:21
24 [1] - 655:14
24th [1] - 471:25
25 [2] - 314:11, 491:3
26 [2] - 307:15, 309:25
26th [1] - 297:10
27 [2] - 572:17, 652:20
28 [3] - 295:22, 296:18, 684:11
299 [3] - 296:17, 297:14, 685:5
2:00 [1] - 487:2

3

3 [5] - 295:15, 297:3, 298:4, 298:15, 415:21
3/30/15 [1] - 643:10
30 [3] - 489:5, 557:24, 660:21
304 [1] - 685:12
315 [1] - 685:14
32 [1] - 572:19
331 [1] - 685:16
338 [3] - 494:17,

494:22, 494:25
343 [2] - 297:5, 688:5
344 [2] - 688:6, 688:8
345 [1] - 688:12
349 [1] - 688:14
35 [1] - 337:5
35-percent [8] - 337:13, 337:20, 338:6, 338:15, 338:17, 340:3, 340:8, 342:14
350 [1] - 688:18
358 [1] - 685:19
36 [2] - 400:14, 400:25
36,000 [3] - 400:22, 400:25, 401:3
36-month [1] - 400:20
362 [1] - 685:20
368 [1] - 688:21
375 [1] - 688:23
376 [1] - 689:4
381 [1] - 685:22
39 [1] - 298:11
390 [1] - 685:23
397 [1] - 686:4
3:00 [1] - 322:17

4

4 [23] - 295:19, 297:3, 297:19, 298:4, 354:15, 354:18, 354:19, 355:3, 355:14, 357:21, 398:6, 398:8, 398:15, 398:22, 407:19, 423:11, 423:13, 423:16, 591:23, 592:4, 594:9, 687:7, 687:9
400 [1] - 655:11
405-406 [2] - 689:7, 689:10
408 [1] - 686:6
417 [1] - 686:8
424 [3] - 494:16, 494:22, 494:23
434 [1] - 488:19
441 [1] - 689:12
450 [1] - 689:15
464 [1] - 685:6
468 [1] - 689:19
472 [1] - 686:10
474 [1] - 686:12
487 [1] - 685:6
4th [3] - 296:17, 297:14, 594:10

5

5 [11] - 296:4, 297:3, 298:4, 298:15, 354:15, 354:19, 358:22, 358:23, 359:2, 362:20, 362:21
500 [1] - 655:12
502 [1] - 686:19
545 [1] - 686:22
546 [1] - 686:23
549 [1] - 685:5
557 [1] - 686:14
558 [1] - 686:16
574 [1] - 685:7
583 [2] - 687:3, 687:5
591 [1] - 687:7
592 [2] - 687:9, 687:11
5:52 [1] - 682:22
5:54 [1] - 683:8

6

6 [15] - 296:9, 297:3, 297:19, 298:4, 304:7, 304:11, 304:14, 304:21, 317:2, 391:7, 391:21, 392:5, 392:12, 392:17, 685:11
60-20 [4] - 450:8, 596:2, 597:10, 689:14
620 [1] - 687:13
6265019401 [1] - 365:6
633 [1] - 687:15
640 [1] - 687:17
651 [2] - 687:20, 687:22
657 [1] - 685:5
665 [1] - 685:6
684-7298 [1] - 296:25
6:00 [1] - 682:20

7

7 [5] - 315:24, 316:4, 316:7, 316:12, 685:13
7,500 [1] - 364:24
7-Eleven [4] - 607:5, 613:21, 670:15, 670:24
700 [1] - 382:15
75 [4] - 392:10, 392:23, 393:6, 393:19

8

8 [20] - 331:20, 331:24, 332:3, 334:8, 335:22, 336:3, 385:12, 385:13, 387:25, 389:16, 391:25, 392:6, 392:12, 392:20, 521:10, 521:19, 525:4, 525:20, 528:24, 685:15
805 [1] - 296:24
885 [1] - 298:16
8A [1] - 525:25

9

9 [18] - 358:7, 358:9, 358:15, 358:16, 358:17, 359:6, 362:5, 362:21, 363:5, 366:16, 366:20, 423:12, 423:14, 428:8, 428:10, 525:2, 587:23, 685:17
911 [1] - 553:24
9F [1] - 526:21

A

A-D-A-M [1] - 638:21
A.M [1] - 296:19
abbreviation [1] - 523:25
abide [3] - 321:16, 587:18, 599:7
ability [3] - 301:21, 302:4, 442:3
able [11] - 460:14, 485:15, 578:14, 637:19, 672:4, 672:8, 672:25, 673:11, 674:13, 683:4, 688:17
absence [1] - 681:20
Absolutely [9] - 402:6, 416:25, 425:7, 429:22, 461:23, 463:5, 463:7, 540:7, 680:21
absolutely [5] - 368:24, 428:10, 431:4, 682:5, 682:10
accept [2] - 589:5, 591:16
acceptable [1] - 680:16
Acceptance [1] - 577:3
accepted [3] - 365:2, 391:6, 630:19
access [3] - 472:4, 477:10, 477:14
accommodate [1] - 574:19
according [5] - 356:14, 382:5, 382:15, 386:14, 615:18
account [8] - 365:5, 373:9, 373:11, 374:5, 645:22, 645:25, 655:15
Accountant [2] - 348:11, 348:12
accountant [8] - 348:14, 349:13, 376:8, 376:14, 453:5, 458:7, 458:9, 688:14
accounting [1] - 349:18
accounts [6] - 372:9, 372:12, 372:23, 373:3, 373:13, 458:24
accurate [1] - 524:9
accurately [1] - 524:13
accusations [2] - 614:4, 633:5
accused [1] - 550:14
acknowledge [2] - 356:4, 356:8
acknowledged [1] - 642:7
acquired [1] - 497:19
acronym [1] - 523:25
act [1] - 529:4
acted [1] - 413:6
acting [1] - 471:6
ACTION [6] - 295:5, 295:10, 295:15, 295:19, 296:4, 296:9
action [3] - 318:17, 529:17, 690:16
actions [4] - 529:18, 571:5, 616:4, 662:13
acts [1] - 522:17
actual [1] - 628:14
Acura [2] - 573:2, 573:3
ADAM [1] - 638:21
add [22] - 336:14, 532:8, 564:4, 601:20, 601:22, 602:2, 602:8, 603:2, 603:16, 604:10, 604:14, 604:17, 608:16, 608:23, 614:24, 634:18, 635:7, 635:13, 635:16, 652:11, 652:12, 652:13
add-on [1] - 635:16
add-ons [19] - 336:14, 601:20, 601:22, 602:2, 602:8, 603:2, 603:16, 604:10, 604:14, 604:17, 608:16, 608:23, 614:24, 634:18, 635:7, 635:13, 652:11, 652:12, 652:13
added [1] - 333:14
addition [1] - 638:13
additional [7] - 384:9, 403:12, 414:25, 416:15, 603:2, 614:24, 631:9
address [15] - 299:5, 346:24, 488:10, 488:18, 494:16, 494:20, 494:24, 558:19, 559:5, 594:9, 594:13, 595:8, 596:12, 596:15, 597:5
adds [1] - 443:22
adequate [1] - 584:17
admit [1] - 666:23
adopted [1] - 514:18
advanced [1] - 460:6
advantage [3] - 430:14, 560:12, 655:13
advertise [3] - 416:10, 485:22, 486:2
advertised [8] - 383:3, 383:15, 384:14, 385:3, 416:2, 485:25, 486:5, 580:10
advertisement [8] -

381:8, 381:23, 382:18, 383:19, 415:23, 418:18, 419:2, 685:21
advertisements [1] - 383:8
advertising [3] - 541:22, 580:6, 657:7
advise [3] - 574:10, 574:17, 574:18
advised [1] - 654:23
advisement [3] - 371:7, 371:23, 407:5
Affair [4] - 326:5, 326:10, 536:23
Affairs [13] - 317:7, 317:10, 317:12, 317:14, 317:17, 317:19, 317:22, 318:18, 319:20, 319:22, 319:25, 553:2, 553:3
affect [3] - 301:19, 302:4, 387:15
affiliate [1] - 490:4
Affiliation [1] - 518:20
affiliation [6] - 518:23, 519:2, 519:5, 519:13, 520:6, 520:10
affiliations [1] - 519:18
afford [1] - 615:4
After-sale [4] - 330:3, 330:4, 601:22, 652:12
after-sale [22] - 330:6, 330:7, 330:10, 334:19, 336:15, 378:19, 378:20, 397:15, 397:16, 397:19, 405:22, 406:4, 406:13, 406:19, 557:12, 601:21, 602:2, 603:12, 606:21, 634:23, 652:13, 689:9
Aftermarket [1] - 634:23
aftermarket [11] - 329:10, 330:2, 334:19, 378:19, 406:3, 601:19, 608:16, 608:22, 634:18, 635:7, 652:10
afternoon [3] - 487:5, 487:6, 574:3
afterwards [3] - 408:22, 409:9, 409:14
agency [2] - 451:4, 636:4
ago [10] - 300:21, 301:5, 372:22, 456:24, 498:3, 498:4, 499:14, 564:12, 575:21
agree [8] - 381:3, 393:25, 394:5, 477:6, 605:8, 634:8, 635:9, 681:8
agreed [3] - 603:19, 622:14, 680:9
agreeing [5] - 371:11, 371:18, 371:21, 381:4, 604:9
agreement [71] - 317:14, 317:21, 395:11, 401:21, 402:24, 402:25, 403:6, 403:20, 404:5, 404:10, 404:14, 407:9, 407:10, 407:13, 414:24, 496:6, 496:10, 497:8, 497:10, 498:11, 502:3, 504:3, 504:7, 504:8, 504:10, 504:13, 504:18, 504:21, 505:3, 505:13, 505:16, 505:18, 505:19, 505:20, 505:21, 506:2, 506:6, 506:10, 506:15, 518:4, 518:10, 521:9, 521:16, 521:22, 527:10, 529:9, 529:15, 581:14, 581:18, 582:3, 582:15, 582:22, 582:25, 584:23, 585:3, 585:4, 586:8, 587:3, 587:9, 587:11, 591:4, 591:9, 591:14, 599:8, 625:18, 632:5, 638:15, 638:25, 639:12, 659:4, 659:5
Agreement [7] - 503:18, 504:11, 505:11, 583:9, 583:13, 687:3, 687:5
agreements [13] - 328:10, 403:2, 403:3, 501:14, 501:25, 581:9, 581:23, 583:4, 589:18, 592:13, 592:16, 660:24, 662:12
ahead [3] - 406:10, 439:25, 649:5
Ahmad [1] - 354:11
AHMAD [1] - 297:9
Ahmed [3] - 348:15, 348:16, 688:14
AHMED [1] - 348:18
al [6] - 295:6, 295:10, 295:15, 295:20, 296:5, 296:9
alcohol [1] - 444:15
Alex [2] - 340:2, 340:5
Alkhatib [17] - 299:20, 331:22, 354:19, 378:9, 378:10, 379:11, 381:9, 382:2, 397:7, 398:21, 435:12, 435:23, 440:6, 465:2, 466:12, 467:6, 685:16
ALKHATIB [2] - 295:3, 297:4
Alkhatib's [7] - 354:16, 381:2, 385:15, 385:18, 390:18, 397:21, 398:13
allegation [8] - 427:23, 428:2, 428:12, 539:25, 616:6, 617:9, 617:14, 617:19
allegations [2] - 539:5, 616:2
alleged [1] - 529:25
allegedly [1] - 672:21
alleges [1] - 534:8
alleging [2] - 530:15, 530:20
Allow [1] - 612:19
allow [4] - 304:23, 325:5, 575:3, 575:4
allowed [5] - 338:11, 338:12, 383:12, 482:6, 603:12
allowing [1] - 461:5
Ally [2] - 576:23, 576:25
Almost [1] - 415:18
almost [3] - 381:22, 675:4, 675:10
alone [3] - 305:10, 444:17, 602:18
amount [34] - 362:16, 373:24, 374:3, 375:22, 376:10, 376:17, 376:20, 382:13, 402:7, 413:24, 413:25, 414:2, 416:12, 416:13, 452:2, 452:14, 452:21, 452:22, 453:7, 453:15, 458:5, 602:16, 604:15, 604:16, 609:7, 619:18, 622:14, 672:16, 673:2, 673:11, 674:14, 685:20, 688:22, 689:4
AND [1] - 297:19
AND/OR [2] - 688:2, 689:2
Angel [11] - 341:9, 344:5, 344:10, 444:11, 561:16, 663:16, 663:17, 663:23, 664:4, 664:7, 688:6
Angel's [1] - 561:17
angry [1] - 321:13
ANSWER [1] - 434:24
answer [86] - 299:17, 299:25, 301:12, 301:21, 301:25, 302:5, 309:12, 314:16, 314:25, 322:4, 322:6, 323:7, 323:20, 325:2, 325:9, 325:11, 326:6, 327:9, 327:19, 348:7, 355:7, 359:19, 359:20, 375:13, 388:24, 407:22, 411:2, 420:21, 421:3, 427:6, 427:10, 430:4, 434:13, 434:16, 434:18, 434:25, 438:23, 444:22, 454:24, 458:17, 461:9, 461:11, 462:12, 462:15, 479:13, 481:4, 482:7, 482:9, 482:10, 482:20, 482:23, 483:10, 485:20, 486:15, 508:23, 574:12, 575:4, 575:5, 609:13, 610:22, 611:21, 612:8, 647:12, 662:21, 662:23, 663:3, 665:24, 666:8, 667:4, 667:7, 667:9, 674:4, 674:5, 676:16, 677:6, 677:12, 677:22, 678:8, 678:10, 679:16, 679:17, 679:23, 680:12, 680:14, 680:16
Answer [1] - 384:20
answered [15] - 323:5, 325:3, 355:4, 355:11, 395:5, 409:25, 438:21, 455:25, 462:7, 480:20, 556:24, 569:6, 666:9, 667:6, 674:3
answering [7] - 301:14, 377:19, 445:2, 466:21, 571:21, 673:6, 679:19
answers [3] - 574:25, 619:12, 684:13
ANWAR [2] - 295:3, 297:4
Anwar [6] - 331:22, 354:16, 378:9, 378:10, 398:12, 685:16
anyhow [2] - 566:23, 650:10
anyplace [1] - 596:13
anytime [1] - 390:3
apart [2] - 650:17, 650:22
Apart [1] - 650:24
apologize [2] - 334:21, 495:9
appear [2] - 614:7, 614:9
applicable [1] - 522:23
applicant [1] - 618:18
application [51] - 472:15, 473:3, 473:9, 473:10, 473:14, 473:15, 473:17, 473:19, 473:24, 474:22, 475:3, 475:11, 475:20, 476:2, 476:9, 476:21,

476:22, 478:4, 478:17, 479:5, 480:7, 480:12, 542:11, 542:12, 542:24, 618:18, 619:10, 620:3, 622:3, 624:14, 624:21, 625:7, 625:19, 625:24, 626:4, 630:14, 630:18, 631:11, 631:16, 631:20, 632:8, 632:12, 633:10, 633:14, 633:19, 634:4, 638:14, 640:7, 640:21, 644:10
Application [2] - 623:10, 643:14
applications [3] - 478:3, 478:11, 623:18
apply [1] - 574:15
appreciate [7] - 305:5, 321:22, 321:24, 321:25, 549:14, 549:16, 598:21
appropriate [1] - 439:13
approval [10] - 387:2, 389:8, 389:14, 540:17, 628:11, 630:21, 635:20, 636:5, 637:13, 638:7
approve [3] - 355:23, 631:20, 632:8
approved [16] - 354:12, 355:21, 356:2, 356:6, 367:11, 391:19, 500:16, 530:8, 630:19, 631:2, 633:10, 633:11, 634:5, 640:12
approving [1] - 641:16
approximation [1] - 520:23
April [6] - 295:22, 296:18, 465:12, 466:3, 467:14, 684:11
area [3] - 302:7, 354:2, 576:5
ARIANA [1] - 297:16
Ariana [1] - 464:18
arise [1] - 527:8
ARR)(SMG [6] - 295:4, 295:9, 295:13, 295:18, 296:3, 296:8
arranged [2] - 367:4, 368:17
arrangement [1] - 394:22
arrested [11] - 353:14, 353:15, 353:20, 453:25, 454:3, 454:6, 454:8, 455:6, 455:20, 457:10, 567:3
arrive [1] - 481:5
arrived [1] - 384:11
arrow [2] - 386:4, 386:10
artist [1] - 431:11
Aside [1] - 494:6
aside [3] - 388:9, 388:18, 505:16
asserting [1] - 456:3
assign [2] - 403:23, 500:24
assigned [9] - 422:3, 427:24, 428:5, 428:10, 428:13, 500:13, 500:19, 557:8, 569:17
assignee [3] - 422:10, 422:14, 562:3
assigning [1] - 550:15
assignment [1] - 661:18
assist [2] - 321:21, 321:22
assistance [3] - 321:23, 321:25, 601:11
associated [1] - 410:17
association [1] - 314:13
assumed [3] - 369:7, 409:16, 419:13
assuming [2] - 515:22, 595:18
Assuming [1] - 515:24
atmosphere [1] - 351:15
attached [3] - 547:9, 547:16, 548:2
attempt [1] - 521:2
attempted [2] - 572:8, 609:19
attend [2] - 300:17, 637:8
attorney [20] - 375:21, 380:12, 380:13, 432:8, 473:5, 493:12, 493:18, 493:23, 494:2, 563:21, 568:2, 574:4, 610:25, 611:4, 611:24, 612:12, 612:24, 620:25, 675:20, 677:13
Attorney [2] - 297:19, 298:9
attorneys [3] - 450:17, 464:20, 574:16
Attorneys [3] - 297:3, 298:4, 298:15
attorneys' [3] - 526:9, 526:18, 527:4
attractive [1] - 485:24
auction [11] - 411:9, 411:14, 411:15, 412:2, 412:3, 412:13, 412:19, 414:18, 416:11, 515:11, 515:19
Auction [2] - 411:25, 412:2
auctioneers [3] - 411:24, 411:25, 412:3
auctions [1] - 412:5
audio [3] - 434:2, 437:24, 449:15
audio-recording [1] - 434:2
August [27] - 417:15, 432:4, 432:12, 432:15, 432:18, 432:20, 433:19, 434:5, 434:7, 434:22, 435:2, 435:3, 435:4, 435:6, 435:12, 435:16, 437:8, 437:25, 440:3, 448:6, 464:22, 465:6, 470:10, 470:18, 569:17, 569:18, 629:22
AUL [16] - 355:16, 397:24, 399:7, 399:12, 399:15, 400:4, 401:22, 404:11, 404:12, 404:13, 404:15, 405:18, 407:16, 686:4, 689:6
authorization [3] - 413:11, 579:23, 609:25
authorize [4] - 351:3, 361:16, 413:10, 688:17
authorized [3] - 357:9, 360:9, 512:14
Auto [39] - 301:3, 340:17, 340:21, 488:16, 488:18, 488:22, 489:2, 489:13, 489:17, 490:12, 491:2, 492:6, 492:11, 494:10, 494:14, 494:19, 495:3, 497:9, 497:14, 498:5, 498:9, 498:12, 498:19, 499:2, 500:4, 508:5, 508:9, 518:21, 518:24, 519:20, 519:23, 520:2, 520:5, 520:9, 520:11, 520:12, 521:6, 570:5, 571:25
auto [3] - 412:4, 441:5, 655:10
automatic [3] - 496:12, 500:6, 500:8
Automatic [1] - 497:7
automobile [8] - 580:6, 580:9, 580:14, 602:6, 602:7, 621:10, 622:19, 640:4
automobiles [1] - 453:16
automobiles...are [1] - 522:22
Avenue [5] - 296:23, 298:16, 307:9, 488:10, 594:8
avoid [2] - 320:3, 649:2
aware [43] - 330:20, 330:25, 341:3, 353:8, 437:9, 443:3, 443:6, 504:12, 504:21, 506:4, 529:25, 538:11, 539:4, 539:15, 539:22, 540:4, 540:8, 540:11, 549:2, 549:5, 553:23, 557:14, 581:21, 582:2, 582:12, 582:15, 582:21, 582:24, 592:12, 593:2, 613:13, 616:6, 617:14, 617:18, 659:4, 659:11, 659:17, 660:11, 660:15, 660:22, 664:16, 666:2
awareness [1] - 662:10
awhile [1] - 614:10

B

background [3] - 487:15, 487:19, 577:5
backing [1] - 338:15
bad [3] - 433:19, 447:5, 611:5
Bains [16] - 304:10, 306:14, 306:22, 308:16, 308:20, 309:5, 316:3, 316:23, 316:24, 317:10, 317:12, 317:14, 321:3, 322:22, 685:12, 685:14
Bains's [1] - 317:18
balance [1] - 340:15
band [1] - 682:16
BANK [1] - 297:20
bank [114] - 309:18, 310:15, 310:17, 310:19, 363:23, 364:13, 365:6, 365:12, 365:17, 365:19, 365:23, 368:4, 368:8, 368:10, 369:3, 370:6, 370:9, 370:19, 370:21, 371:7, 371:16, 371:25, 374:14, 374:17, 391:6, 391:14, 391:16, 391:19, 393:4, 393:12, 393:14, 394:12, 394:22, 395:7, 404:16, 427:24, 428:5, 460:8, 460:9, 460:11, 475:15, 480:14, 507:15, 507:17, 507:19, 507:20, 519:22, 540:20, 544:19, 561:21, 562:2, 562:6, 562:11,

563:8, 563:14, 565:22, 565:25, 570:6, 570:9, 590:11, 590:15, 590:20, 591:4, 591:7, 591:8, 591:12, 592:22, 601:12, 602:5, 602:21, 603:6, 603:11, 603:12, 603:20, 603:22, 604:2, 604:9, 604:11, 604:14, 606:7, 608:18, 609:6, 615:5, 616:9, 631:17, 635:15, 636:5, 637:15, 638:16, 638:23, 639:7, 639:13, 639:17, 640:15, 640:20, 644:10, 653:4, 653:5, 655:12, 656:18, 660:25, 661:3, 661:5, 661:8, 661:12, 661:16, 661:17, 661:18, 661:23, 662:12, 675:2, 688:19, 688:20
Bank [93] - 328:5, 363:24, 364:14, 366:2, 366:7, 372:10, 373:4, 373:19, 403:20, 403:24, 404:2, 404:7, 468:5, 500:22, 500:24, 501:14, 502:2, 574:5, 575:18, 575:20, 576:9, 576:24, 576:25, 580:5, 580:8, 580:12, 580:18, 580:25, 581:23, 582:6, 582:22, 582:25, 584:13, 586:16, 587:14, 587:20, 588:17, 589:9, 589:22, 591:22, 592:3, 592:8, 593:4, 595:14, 600:14, 602:14, 603:15, 605:11, 605:19, 606:7, 614:5, 616:4, 618:12, 624:21, 630:11, 631:5, 633:16, 634:9, 635:6, 638:4, 638:6, 638:24, 640:3, 641:15, 642:8, 645:24, 646:8, 646:13, 647:13, 648:2, 650:11, 651:3, 651:7, 651:11, 652:14, 653:3, 653:6, 656:11, 657:2, 657:8, 659:3, 659:4, 659:12, 659:16, 661:15, 670:3, 672:3, 687:6, 687:8, 687:10, 689:19
bank's [2] - 371:10, 562:6
banking [6] - 357:7, 371:13, 371:14, 372:9, 460:7
banks [15] - 299:23, 366:6, 372:2, 372:15, 387:3, 576:19, 588:9, 588:14, 601:19, 601:25, 630:13, 637:3, 660:23, 661:4
bare [1] - 635:14
bare-bones [1] - 635:14
bargain [1] - 457:12
based [3] - 389:5, 602:17, 640:19
basic [1] - 618:14
basis [6] - 404:12, 512:17, 512:19, 645:15, 649:23, 668:13
Bates [4] - 651:17, 651:22, 687:19, 687:22
Bates-stamped [4] - 651:17, 651:22, 687:19, 687:22
battery [1] - 483:7
BDC [1] - 383:22
bearing [1] - 557:24
become [2] - 540:14, 670:12
becomes [1] - 540:12
becoming [1] - 428:18
began [1] - 481:6
begin [1] - 501:2
beginning [6] - 338:24, 444:3, 448:2, 459:25, 564:14, 564:15
Behalf [2] - 324:5, 324:9
behalf [23] - 324:5, 346:5, 357:9, 357:24, 360:9, 372:24, 373:4, 403:7, 493:9, 493:13, 493:23, 494:8, 502:15, 505:5, 512:15, 512:20, 533:4, 534:11, 548:9, 548:16, 573:6, 599:25, 617:22
belief [2] - 636:13, 679:13
Below [1] - 401:3
below [1] - 510:6
benefit [1] - 656:24
Bengali [4] - 615:20, 668:17, 669:10, 669:11
best [12] - 378:25, 379:2, 442:2, 574:11, 574:19, 628:10, 633:3, 635:2, 641:14, 651:2, 651:6, 651:10
better [4] - 379:21, 393:11, 480:2, 540:10
Better [9] - 662:16, 662:19, 663:4, 663:7, 663:15, 663:18, 664:12, 664:16, 664:19
between [41] - 302:10, 303:4, 323:17, 328:23, 332:9, 332:19, 334:25, 335:4, 335:9, 336:4, 345:11, 362:20, 368:13, 370:14, 370:17, 389:23, 392:5, 392:12, 401:21, 404:14, 407:10, 418:21, 427:16, 436:10, 489:17, 496:7, 497:9, 498:12, 501:25, 502:8, 504:13, 518:4, 518:23, 519:5, 519:6, 519:13, 542:3, 582:5, 584:24, 605:6, 688:12
Between [3] - 414:20, 453:4, 519:8
big [3] - 557:20, 565:20
bill [21] - 328:24, 329:3, 329:9, 331:14, 332:8, 332:10, 332:20, 333:25, 337:3, 337:7, 337:8, 337:11, 338:14, 338:16, 551:5, 602:21, 638:15, 639:4, 639:8, 639:12, 640:16
Bill [1] - 334:2
bills [7] - 328:19, 329:21, 330:22, 331:8, 332:5, 601:13, 605:10
binding [12] - 335:3, 335:8, 335:17, 335:18, 336:4, 388:2, 389:18, 523:15, 589:14, 589:16, 589:18, 589:19
bit [1] - 460:6
black [1] - 616:22
blank [9] - 343:12, 344:9, 349:3, 350:19, 375:16, 376:9, 441:21, 450:5, 468:13
blanks [1] - 442:2
blindly [1] - 632:20
blood [1] - 690:17
Bobby [13] - 442:11, 442:21, 443:8, 443:15, 444:6, 444:14, 444:16, 445:4, 445:15, 446:12, 446:22, 447:3, 447:8
bogus [12] - 424:13, 424:14, 425:9, 425:11, 425:14, 425:18, 425:25, 427:25, 428:15, 433:2, 556:14, 558:11
Bogus [2] - 428:3, 428:6
bona [1] - 523:17
bones [1] - 635:14
books [1] - 349:21
BORIS [2] - 295:12, 297:4
Boris [13] - 354:17, 359:4, 359:8, 364:12, 364:16, 366:10, 417:23, 427:13, 549:25, 567:8, 567:17, 685:18, 686:7
born [1] - 572:15
borrowed [2] - 310:18, 310:19
borrower [3] - 308:19, 308:21, 356:17
boss [1] - 459:23
bosses [1] - 537:19
bottom [17] - 307:12, 310:3, 318:2, 330:17, 337:2, 337:3, 359:16, 363:13, 366:15, 382:24, 383:4, 422:7, 517:10, 561:5, 562:4, 601:6, 620:5
bought [12] - 378:20, 412:21, 412:22, 420:20, 496:11, 496:20, 506:16, 568:9, 568:19, 617:25, 689:18
Boulevard [8] - 343:5, 449:9, 450:8, 485:15, 485:19, 596:3, 597:10, 689:14
box [8] - 509:18, 510:3, 511:7, 511:8, 511:10, 517:5, 632:15
breach [6] - 525:19, 525:21, 526:16, 527:9, 527:13, 527:22
breached [2] - 525:15, 529:9
bread [1] - 507:19
break [5] - 322:12, 378:4, 573:21, 574:18, 623:21
BRENER [18] - 298:17, 486:22, 487:4, 502:18, 519:8, 519:11, 522:5, 535:22, 545:20, 547:12, 547:22, 547:25, 549:8, 549:12, 570:23, 573:19, 660:6, 685:6
Brener [11] - 417:7, 487:7, 547:7, 550:5, 557:5, 573:13, 581:7, 581:17, 587:7, 618:9, 621:24
Brener's [2] - 571:22, 629:16

Brick [1] - 298:5
brief [3] - 378:6, 546:6, 573:24
briefly [2] - 495:7, 495:9
Bring [1] - 682:3
bring [9] - 339:9, 436:4, 436:24, 445:8, 459:17, 563:11, 598:9, 615:14, 682:6
bringing [3] - 435:25, 609:24, 668:17
Broadway [3] - 296:17, 297:14, 297:21
broken [1] - 600:25
broker [1] - 573:2
Brooklyn [5] - 297:10, 353:14, 435:20, 435:21, 493:19
brother [1] - 613:24
brought [4] - 317:23, 459:17, 564:22, 624:3
BRUCE [1] - 298:3
Bruce [19] - 354:21, 359:5, 362:25, 398:24, 435:22, 441:4, 539:7, 546:11, 546:12, 565:5, 565:10, 567:25, 571:12, 571:14, 590:6, 600:5, 637:6
Building [1] - 297:20
bunch [1] - 355:8
Bureau [9] - 662:17, 662:20, 663:4, 663:7, 663:15, 663:18, 664:13, 664:17, 664:19
burn [1] - 645:12
business [54] - 311:14, 311:19, 314:10, 314:11, 327:25, 328:3, 330:8, 339:3, 339:10, 339:13, 352:25, 353:23, 357:7, 367:10, 372:3, 372:8, 410:17, 426:18, 426:20, 433:7, 433:8, 433:14, 433:15, 446:7, 460:7, 487:25, 488:4, 488:7, 489:8, 489:16, 496:3, 496:15, 499:8, 501:8, 501:11, 520:11, 520:12, 522:17, 523:6, 554:8, 569:24, 571:4, 601:16, 621:10, 628:18, 660:7, 672:10, 676:24, 676:25, 677:17, 678:4, 678:14, 678:23
Business [9] - 662:16, 662:19, 663:4, 663:7, 663:15, 663:18, 664:12, 664:17, 664:19
businesses [1] - 370:10
businessman [4] - 676:23, 677:16, 678:3, 678:17
busy [1] - 571:14
butter [1] - 507:19
buy [22] - 365:12, 385:2, 412:8, 412:9, 412:19, 412:20, 413:9, 413:11, 467:20, 530:12, 568:6, 589:10, 589:24, 590:9, 590:12, 599:10, 608:24, 615:14, 635:15, 635:16, 646:20, 648:4
Buyer [3] - 408:14, 588:6, 686:6
buyer [11] - 308:17, 331:23, 332:7, 388:4, 388:19, 389:8, 389:21, 412:24, 415:8, 560:23, 685:16
buyer's [32] - 306:12, 328:19, 328:23, 328:25, 329:8, 329:21, 332:10, 332:20, 333:19, 334:8, 334:10, 334:24, 336:2, 337:4, 358:24, 385:14, 385:18, 386:19, 387:6, 387:25, 388:14, 388:20, 389:4, 389:16, 389:17, 414:3, 414:5, 414:9, 414:14, 415:17, 416:11, 542:13
Buyer's [3] - 333:20, 334:25, 542:14
Buying [1] - 495:14
buying [12] - 311:25, 313:14, 315:18, 329:4, 333:22, 378:15, 413:3, 416:18, 460:8, 507:20, 599:8, 615:18
BY [15] - 297:6, 297:16, 297:22, 298:7, 298:12, 298:17, 299:10, 464:17, 487:4, 549:23, 574:2, 657:15, 665:7, 688:4, 689:16

C

calculate [1] - 416:16
calculated [1] - 619:15
California [2] - 350:16, 405:9
camera [8] - 441:3, 441:13, 441:15, 441:18, 441:23, 449:16, 459:15, 689:12
cameras [3] - 623:15, 623:17, 644:25
Camry [1] - 568:7
canceling [1] - 469:3
cancellation [2] - 468:23, 468:24
cannot [20] - 341:13, 355:20, 379:25, 384:5, 386:24, 450:14, 469:17, 508:13, 530:8, 536:22, 544:12, 545:12, 552:25, 565:6, 565:7, 608:11, 615:4, 644:22, 674:5, 678:10
capable [1] - 575:15
capacity [3] - 477:24, 491:24, 512:7
Capital [10] - 328:6, 381:4, 500:21, 501:5, 501:7, 501:9, 501:15, 502:2, 576:23, 577:2
captured [1] - 623:17
Car [12] - 310:24, 311:4, 356:13, 356:14, 356:19, 356:21, 451:14, 535:2, 535:4, 575:24, 586:19, 634:12
car [165] - 300:25, 314:10, 328:4, 328:11, 329:4, 329:10, 333:3, 333:22, 339:10, 339:13, 378:16, 378:18, 378:22, 378:23, 378:24, 379:2, 379:4, 379:6, 379:11, 379:12, 379:15, 379:22, 379:25, 380:3, 384:3, 390:23, 393:24, 396:22, 396:23, 396:25, 397:8, 401:19, 402:2, 402:3, 402:8, 402:19, 402:22, 410:18, 411:9, 411:13, 412:12, 412:19, 412:20, 412:21, 412:22, 413:4, 413:9, 413:15, 413:20, 415:3, 415:4, 415:9, 415:24, 416:4, 416:24, 417:4, 418:9, 418:13, 418:14, 418:16, 418:18, 418:23, 419:3, 419:7, 420:20, 420:23, 421:22, 421:24, 421:25, 423:2, 430:18, 443:21, 452:14, 468:4, 468:7, 481:9, 481:18, 488:3, 488:13, 489:6, 489:7, 507:21, 530:5, 530:6, 530:25, 531:6, 531:7, 533:22, 533:23, 533:24, 534:2, 535:7, 535:10, 536:5, 544:4, 544:6, 544:8, 544:9, 544:18, 544:23, 544:24, 550:23, 563:11, 563:13, 567:9, 567:17, 568:18, 590:14, 590:16, 590:17, 590:18, 598:7, 598:9, 598:13, 598:15, 598:18, 598:19, 599:8, 602:17, 602:18, 602:22, 604:13, 604:15, 604:16, 606:3, 609:18, 609:21, 609:24, 610:5, 610:23, 610:24, 612:9, 614:23, 615:3, 615:14, 615:22, 618:2, 622:6, 622:15, 624:4, 634:6, 634:9, 634:10, 635:14, 642:8, 648:5, 660:22, 661:6, 670:21, 671:25, 672:5, 672:9, 672:16, 672:23, 673:2, 673:9, 673:11, 674:13
Car's [1] - 493:22
Card [1] - 513:25
cards [3] - 503:12, 517:20, 517:25
care [7] - 441:11, 441:12, 463:18, 536:21, 546:12, 598:20, 664:14
carefully [2] - 647:19, 654:2
cares [1] - 322:19
Carl [4] - 566:3, 566:4, 566:20
CARL [1] - 566:4
Cars [182] - 299:22, 302:11, 303:5, 303:9, 303:10, 303:14, 309:10, 309:15, 310:7, 311:8, 311:11, 311:13, 313:19, 328:2, 328:3, 354:8, 355:17, 357:10, 360:6, 360:10, 361:4, 361:18, 362:10, 366:21, 367:5, 367:21, 367:23, 368:9, 368:13, 368:18, 368:21, 368:23, 369:6, 369:10, 369:11, 369:15, 369:21, 370:2, 371:5, 372:16, 372:24, 374:18, 374:21, 375:3, 375:10, 375:18, 375:23, 383:5, 390:11, 390:16, 394:13, 395:10, 399:4, 399:9,

399:14, 405:18, 405:21, 406:10, 406:21, 407:20, 407:21, 408:4, 414:22, 415:16, 445:21, 445:22, 445:24, 446:6, 451:12, 451:25, 452:13, 452:17, 452:19, 453:3, 453:9, 453:14, 458:2, 458:4, 459:2, 487:20, 487:22, 488:9, 489:14, 489:18, 491:6, 491:8, 491:13, 491:18, 491:22, 492:14, 492:24, 493:4, 493:7, 493:10, 493:14, 493:17, 493:24, 494:7, 494:8, 495:10, 495:18, 496:3, 496:8, 496:14, 496:22, 497:12, 497:16, 497:23, 500:4, 500:13, 500:23, 501:13, 501:25, 502:2, 502:16, 504:3, 504:14, 504:24, 505:2, 507:10, 507:25, 512:2, 512:5, 512:12, 512:15, 512:21, 513:3, 513:15, 513:22, 514:7, 514:9, 514:16, 514:25, 515:4, 515:9, 518:5, 518:24, 519:9, 519:14, 532:11, 532:15, 532:22, 533:5, 533:15, 537:3, 548:10, 571:24, 572:23, 573:7, 576:15, 576:19, 577:7, 577:18, 577:22, 578:17, 579:13, 580:4, 580:17, 581:22, 581:25, 582:5, 582:16, 582:24, 585:5, 586:2, 586:5, 586:17, 587:4, 587:13, 589:15, 589:23, 591:22, 594:7, 596:22, 629:7, 641:12, 685:23, 687:6, 688:21, 688:22, 689:6, 689:9
cars [31] - 303:10, 311:25, 313:14, 315:18, 354:6, 365:12, 378:15, 383:7, 383:9, 383:15, 384:14, 384:23, 402:13, 412:3, 413:12, 416:21, 484:4, 485:23, 486:4, 488:14, 488:15, 489:7, 489:10, 495:14, 557:10, 568:17, 580:19, 617:25, 668:18, 672:6, 672:10
Cars-dot-com [1] - 383:5
cars-dot-com [5] - 383:7, 383:9, 383:15, 384:14, 384:23
carved [1] - 603:4
case [36] - 300:22, 301:16, 324:22, 327:8, 329:8, 354:24, 367:7, 380:18, 380:19, 397:21, 435:12, 435:23, 440:6, 464:13, 528:18, 530:2, 532:2, 532:6, 536:23, 539:5, 539:6, 546:24, 547:2, 563:22, 564:4, 564:11, 564:17, 565:13, 606:6, 606:10, 613:11, 631:16, 637:6, 638:23, 669:6
Case [6] - 295:3, 295:8, 295:12, 295:17, 296:2, 296:7
cases [11] - 299:19, 299:24, 370:2, 406:13, 529:22, 532:9, 537:15, 537:16, 545:15, 629:16
cash [16] - 377:7, 377:14, 377:16, 377:17, 396:25, 397:9, 408:7, 421:13, 531:16, 557:15, 558:23, 558:25, 559:3, 560:6, 605:3, 619:18
cashed [1] - 365:5
categories [1] - 525:19
CD [2] - 645:11, 645:12
cease [2] - 488:7, 588:17
ceased [2] - 487:25, 498:20
center [1] - 596:19
certain [14] - 384:17, 385:5, 387:13, 402:13, 504:22, 505:4, 520:13, 521:14, 522:9, 588:24, 589:22, 599:5, 599:18, 599:21
certainly [3] - 314:23, 405:24, 522:7
certify [4] - 514:17, 684:8, 690:9, 690:15
Cesar [4] - 313:3, 313:4, 313:7, 313:9
chagrin [1] - 452:11
chance [1] - 486:15
change [4] - 376:18, 387:16, 389:5, 519:12
changing [1] - 457:14
charge [14] - 392:16, 392:17, 392:21, 396:15, 414:11, 414:25, 453:18, 484:22, 484:24, 484:25, 495:24, 605:21, 622:18, 637:15
charged [8] - 396:16, 451:3, 451:13, 452:17, 452:20, 454:20, 456:17, 458:3
charges [3] - 371:10, 371:17, 451:24
charging [2] - 415:6, 415:7
Chase [11] - 365:20, 365:25, 366:7, 372:9, 372:17, 372:18, 372:24, 373:7, 373:19, 374:16, 374:19
cheap [4] - 379:25, 418:9, 418:11, 418:16
check [22] - 326:25, 362:15, 363:22, 363:23, 363:24, 364:4, 364:7, 364:13, 364:18, 364:22, 364:25, 365:2, 365:23, 366:3, 366:4, 366:5, 367:21, 374:11, 468:6, 631:3, 631:6, 685:20
checking [2] - 674:23, 674:25
checks [14] - 348:9, 348:10, 349:23, 349:25, 350:2, 350:4, 350:5, 365:12, 365:16, 373:19, 374:6, 374:8, 374:9, 377:18
childish [1] - 322:2
children [1] - 312:3
Chinese [5] - 342:7, 343:4, 343:17, 563:5, 688:5
Chowdhury [13] - 299:20, 574:7, 617:5, 617:6, 617:23, 629:15, 633:4, 633:15, 635:4, 643:16, 643:19, 647:6, 651:12
CHOWDHURY [2] - 296:7, 297:4
Chowdhury's [2] - 629:25, 644:16
Church [1] - 298:5
cite [2] - 455:2, 455:15
citing [1] - 548:18
City [11] - 496:10, 496:15, 496:17, 496:19, 496:22, 496:23, 496:25, 497:6, 497:19, 497:24
Civic [1] - 557:16
civil [4] - 454:21, 455:2, 455:13, 536:24
claim [3] - 483:7, 483:9, 613:16
claimed [2] - 452:13, 471:11
claims [4] - 527:2, 539:15, 613:11, 616:3
clarify [6] - 347:24, 410:12, 465:23, 653:19, 667:10, 676:5
clarifying [1] - 410:8
clean [1] - 339:3
clear [24] - 318:21, 322:8, 322:15, 329:14, 332:18, 334:23, 360:8, 395:2, 407:6, 407:25, 408:25, 409:10, 409:18, 433:17, 436:12, 450:22, 462:17, 462:20, 492:21, 547:5, 547:22, 664:10, 667:23, 679:11
Clearly [1] - 305:9
clearly [5] - 300:2, 305:8, 308:2, 310:21
click [1] - 628:9
clicking [1] - 631:13
client [13] - 304:18, 304:24, 305:6, 371:9, 409:23, 428:8, 483:7, 592:23, 612:15, 613:3, 613:6, 682:9, 683:3
client's [2] - 456:3, 457:14
clients [2] - 299:19, 349:14
close [4] - 352:24, 448:15, 460:17, 554:7
closed [9] - 303:9, 303:19, 313:19, 372:21, 552:24, 552:25, 554:5, 555:13, 597:2
closing [1] - 353:2
clue [3] - 331:13, 557:17, 603:17
co [1] - 445:9
Co [2] - 297:9, 297:14
Co-Counsel [2] - 297:9, 297:14
co-sign [1] - 445:9
collect [2] - 659:12, 660:23
collectable [1] - 524:21
com [8] - 383:5, 383:7, 383:9, 383:15, 384:14, 384:23, 448:23, 656:19
combined [1] -

606:21
coming [37] - 299:13, 331:14, 351:13, 352:24, 367:12, 382:7, 383:19, 384:5, 386:10, 416:14, 418:12, 418:17, 431:15, 433:9, 435:11, 435:19, 444:18, 498:2, 531:10, 531:12, 533:21, 536:17, 549:2, 551:8, 554:4, 554:14, 554:24, 555:21, 595:4, 596:8, 611:23, 631:19, 645:7, 646:19, 655:8, 655:19, 666:19
commencing [1] - 296:19
comment [1] - 409:8
commission [6] - 390:24, 390:25, 395:19, 395:20, 396:12, 396:17
common [2] - 351:25, 463:19
communicate [3] - 537:4, 565:7, 565:20
communicated [1] - 537:5
companies [18] - 320:4, 353:9, 353:12, 370:14, 372:3, 404:20, 571:25, 581:3, 587:18, 588:10, 588:18, 589:18, 589:20, 592:14, 593:6, 593:7, 602:16, 624:7
Company [1] - 405:25
company [66] - 311:21, 313:13, 313:15, 314:4, 318:12, 318:19, 319:13, 319:15, 320:2, 320:3, 320:5, 324:5, 324:6, 324:9, 326:24, 327:4, 350:11, 350:12, 350:14, 350:16, 350:21, 351:4, 352:24, 353:13, 365:18, 373:15, 374:7, 374:8, 374:10, 383:12, 399:3, 399:20, 399:22, 399:25, 403:10, 404:17, 404:19, 405:8, 405:12, 441:18, 441:22, 453:2, 454:5, 458:25, 459:3, 466:15, 507:3, 507:5, 512:6, 517:22, 519:3, 533:21, 536:23, 565:21, 575:23, 577:16, 597:23, 599:25, 600:7, 606:3, 629:19, 648:11, 688:16, 688:18, 689:11
COMPANY [1] - 297:19
comparing [1] - 428:8
compel [1] - 589:10
compete [1] - 485:16
competent [1] - 523:18
complain [10] - 442:15, 442:22, 466:15, 536:15, 539:10, 555:9, 555:21, 665:15, 665:16, 666:3
complained [9] - 466:14, 467:19, 550:22, 551:13, 552:2, 552:8, 555:15, 665:17, 669:14
complainer [3] - 664:20, 664:23, 664:25
complaining [6] - 339:4, 452:6, 464:22, 464:24, 556:21, 669:20
complaint [22] - 316:17, 317:6, 317:18, 318:22, 340:19, 430:10, 430:11, 465:24, 466:12, 467:6, 467:16, 530:24, 539:9, 539:11, 550:20, 616:24, 617:22, 662:18, 662:21, 662:23, 663:7
complaints [11] - 469:23, 530:22, 536:14, 539:13, 616:2, 629:25, 654:24, 662:20, 663:4, 664:13, 664:17
complete [5] - 333:24, 359:7, 363:5, 588:7, 684:12
compliance [2] - 522:22, 523:7
comply [1] - 528:23
computer [10] - 312:19, 312:20, 312:23, 441:12, 558:15, 559:12, 625:6, 628:14, 630:23, 630:25
computers [3] - 441:11, 630:16, 630:17
con [1] - 431:11
concede [3] - 588:20, 591:2, 592:19
concept [2] - 418:20, 618:15
concern [1] - 346:8
concerned [2] - 396:9, 483:20
concerning [1] - 492:22
concerns [1] - 346:20
conditional [1] - 677:14
conduct [3] - 528:5, 528:9, 568:3
confer [1] - 305:11
confidential [3] - 347:10, 387:23, 436:19
confining [1] - 370:6
confused [1] - 582:18
confusing [2] - 356:10, 408:24
confusion [1] - 450:21
Congratulations [1] - 630:20
connection [11] - 506:6, 506:10, 521:16, 521:22, 526:13, 528:10, 538:12, 538:16, 540:5, 545:3, 545:4
conscience [1] - 679:11
Consent [2] - 316:2, 685:13
consent [3] - 317:9, 318:2, 318:25
considered [1] - 513:21
consignment [2] - 598:16, 598:17
consistent [7] - 477:19, 478:4, 526:10, 527:12, 527:25, 528:14, 529:13
conspiracy [1] - 604:25
Construction [1] - 444:24
consult [2] - 314:12, 314:14
consultant [4] - 315:6, 315:19, 320:4, 320:6
Consultant [2] - 315:20, 320:7
consulting [1] - 320:3
CONSUMER [1] - 298:15
consumer [8] - 368:15, 368:19, 389:12, 478:5, 556:6, 611:2, 633:19, 689:17
Consumer [28] - 317:7, 317:10, 317:12, 317:14, 317:15, 317:17, 317:19, 317:22, 318:17, 319:20, 319:21, 319:25, 326:4, 326:5, 326:10, 354:13, 422:13, 422:15, 487:8, 496:4, 496:7, 502:22, 503:15, 523:24, 536:23, 553:2, 553:3, 686:19
consumer's [1] - 662:18
consumers [6] - 467:19, 467:22, 469:23, 485:23, 616:6, 616:10
consummated [1] - 534:4
Contact [1] - 650:13
contact [30] - 336:8, 343:2, 343:16, 343:22, 344:4, 344:11, 344:18, 345:19, 348:22, 349:5, 350:20, 393:15, 438:17, 450:7, 556:18, 563:17, 564:10, 567:7, 571:12, 628:19, 650:11, 650:22, 655:3, 688:4, 688:6, 688:7, 688:10, 688:13, 688:15, 689:13
contacted [8] - 465:8, 465:12, 465:16, 465:17, 466:12, 564:17, 567:15, 676:12
contacting [1] - 646:14
contacts [2] - 460:11, 662:17
contained [8] - 587:8, 587:16, 592:13, 593:3, 615:11, 617:9, 631:10, 631:24
Contained [1] - 588:2
contains [1] - 505:4
contemplated [1] - 674:12
context [1] - 606:13
continue [4] - 322:8, 325:6, 432:9, 682:23
Continued [1] - 685:4
CONTINUED [6] - 295:23, 296:13, 299:10, 549:23, 657:15, 665:7
continued [7] - 298:2, 299:7, 488:4, 497:6, 552:22, 684:10, 690:11
Continued.. [3] - 297:24, 686:24, 688:25
continues [2] - 489:10, 498:15
CONTINUES.. [1] - 685:25
continuing [2] - 499:8, 575:15
Contract [8] - 304:9, 401:5, 651:17, 651:22, 685:11, 686:15, 687:19, 687:21
contract [192] - 305:19, 305:20, 306:6, 306:8, 306:11, 307:7, 307:12, 308:7, 308:25, 309:9, 309:24, 310:8, 310:22, 312:18, 329:25, 330:11, 335:3, 335:8, 335:17, 335:19, 336:4, 337:2, 337:3,

355:17, 356:8, 359:4, 359:8, 359:14, 359:17, 360:2, 360:14, 360:20, 362:22, 362:24, 363:6, 388:2, 389:19, 397:23, 398:11, 398:12, 399:3, 399:5, 399:12, 399:15, 399:18, 399:19, 399:24, 400:4, 400:10, 400:13, 401:4, 401:6, 401:8, 401:12, 401:16, 401:18, 401:25, 402:5, 402:9, 402:10, 402:12, 403:11, 403:13, 404:3, 405:2, 405:6, 405:11, 407:7, 407:8, 421:6, 422:2, 422:9, 422:11, 422:20, 422:22, 423:3, 423:6, 423:8, 423:18, 423:19, 424:5, 424:18, 425:4, 425:11, 427:16, 427:17, 429:2, 429:16, 433:2, 459:20, 477:20, 498:22, 500:6, 500:13, 500:17, 506:20, 506:21, 506:25, 508:3, 508:10, 512:23, 523:10, 523:11, 523:14, 524:4, 524:17, 524:20, 525:10, 525:23, 526:13, 527:5, 527:14, 528:10, 528:22, 529:8, 531:19, 532:3, 532:18, 533:11, 534:8, 534:13, 534:19, 536:7, 539:17, 539:21, 540:19, 542:17, 542:18, 543:17, 545:10, 547:14, 547:18, 548:17, 548:19, 550:15, 551:6, 552:3, 556:13, 556:14, 556:15, 560:16, 560:18, 560:21, 560:23, 560:25, 561:4, 561:6, 561:19, 562:4, 562:9, 562:10, 562:16, 563:7, 563:8, 563:14, 569:15, 569:16, 572:9, 591:10, 605:24, 606:20, 606:23, 615:7, 638:12, 638:20, 639:9, 640:16, 652:3, 652:10, 652:23, 653:7, 654:10, 659:10, 659:11, 659:13, 659:22, 659:25, 660:4, 667:13, 668:2, 668:8, 668:13, 669:25, 670:19, 670:20, 671:3, 671:5, 671:6, 685:18, 686:4

contracts [45] - 312:14, 403:24, 404:12, 404:13, 405:16, 405:19, 405:20, 406:19, 417:18, 419:12, 419:16, 421:16, 424:7, 424:9, 424:11, 425:15, 425:18, 425:21, 426:14, 429:6, 496:8, 496:18, 497:2, 499:3, 499:7, 499:17, 499:25, 500:5, 500:18, 500:24, 502:4, 502:6, 502:12, 539:16, 552:12, 572:6, 572:14, 573:6, 573:10, 581:2, 589:11, 589:14, 689:5, 689:7, 689:8

control [4] - 368:6, 369:5, 369:17, 688:20

controller [2] - 577:8, 577:9

conversation [5] - 436:20, 467:2, 479:7, 479:9, 677:11

conversations [8] - 434:3, 434:8, 434:23, 435:6, 435:9, 440:17, 440:22, 571:19

convey [1] - 675:19

convicted [10] - 454:11, 454:22, 456:6, 456:9, 456:11, 456:18, 456:20, 457:5, 457:7, 457:11

Cool [1] - 322:20

copied [2] - 644:18, 644:21

copies [7] - 405:4, 549:8, 549:10, 562:16, 688:9, 689:5, 689:8

copy [24] - 343:13, 359:9, 359:12, 359:13, 362:24, 363:8, 398:20, 398:22, 405:10, 420:17, 529:19, 529:20, 529:21, 547:16, 548:5, 548:6, 562:12, 580:25, 602:20, 625:17, 638:14, 640:16, 644:13, 685:19

Copy [1] - 685:17

Corp [1] - 577:3

corporation [1] - 642:15

correct [76] - 303:15, 305:23, 308:17, 308:25, 312:4, 313:17, 313:22, 314:2, 317:7, 317:11, 324:10, 330:12, 355:3, 358:24, 372:7, 374:24, 385:15, 393:20, 394:11, 398:16, 403:4, 404:3, 404:8, 426:15, 439:6, 448:5, 460:23, 462:21, 469:20, 472:13, 477:21, 477:22, 488:11, 489:23, 496:4, 497:3, 497:10, 525:10, 533:2, 533:8, 533:12, 534:11, 534:22, 538:17, 540:6, 541:13, 541:17, 541:19, 541:23, 542:11, 543:20, 549:5, 570:17, 571:23, 588:6, 588:8, 594:9, 594:23, 601:6, 601:17, 615:12, 615:16, 615:17, 631:3, 632:2, 632:6, 632:9, 632:15, 632:16, 634:22, 645:19, 648:20, 649:20, 663:25, 684:12, 684:14

Correct [132] - 303:21, 307:10, 307:19, 308:13, 317:13, 329:19, 329:22, 330:13, 330:14, 330:19, 333:23, 336:21, 350:13, 358:25, 360:3, 362:11, 366:22, 372:11, 387:4, 389:10, 391:20, 392:2, 392:19, 392:24, 393:23, 394:7, 398:17, 400:23, 401:2, 401:7, 402:11, 402:14, 402:19, 403:21, 403:25, 413:13, 414:13, 414:19, 435:7, 438:3, 488:12, 488:21, 489:21, 489:24, 490:3, 490:6, 491:23, 493:25, 494:9, 494:15, 496:5, 496:16, 497:17, 499:5, 499:10, 504:15, 505:14, 507:2, 507:4, 507:8, 508:22, 510:11, 512:13, 517:18, 518:25, 520:3, 520:25, 521:13, 522:15, 523:19, 524:18, 524:22, 525:11, 525:17, 525:24, 526:14, 526:20, 527:17, 529:12, 531:22, 531:25, 532:20, 532:23, 533:3, 533:6, 533:9, 533:13, 533:16, 534:16, 534:17, 534:18, 534:21, 534:23, 537:24, 538:18, 541:7, 541:14, 542:6, 542:9, 542:19, 543:14, 543:19, 550:17, 556:8, 560:11, 560:19, 562:21, 569:25, 570:4, 572:7, 576:17, 581:15, 582:7, 585:13, 587:15, 589:12, 606:16, 606:25, 624:18, 626:18, 627:7, 632:3, 632:10, 637:4, 640:9, 640:11, 645:16, 653:15, 660:2, 661:14, 662:9, 662:14

corrected [6] - 452:23, 452:24, 452:25, 453:2, 453:3, 572:2

correctly [1] - 495:15

Cost [1] - 402:9

cost [17] - 336:12, 336:14, 379:20, 379:21, 380:19, 401:5, 401:23, 401:24, 402:8, 402:10, 402:12, 402:15, 411:13, 412:18, 415:15, 535:6, 535:9

costs [10] - 371:8, 371:12, 401:6, 410:17, 410:20, 414:17, 415:12, 527:4, 527:21, 529:10

counsel [20] - 343:14, 349:6, 358:18, 411:17, 411:19, 442:7, 549:15, 549:25, 575:10, 578:14, 584:18, 589:4, 595:14, 599:24, 600:22, 606:8, 606:9, 612:19, 618:21, 626:3

Counsel [6] - 297:6, 297:9, 297:14, 298:7, 332:13, 619:21

counselor [1] - 647:20

County [1] - 457:20

COUNTY [2] - 684:6, 690:5

couple [15] - 314:3, 352:6, 353:23, 354:14, 467:24, 487:19, 551:14, 554:23, 577:4, 592:11, 623:2, 652:8, 664:9,

671:12, 675:13
course [3] - 493:16, 493:21, 540:10
COURT [1] - 295:2
Court [8] - 297:10, 347:13, 347:14, 379:18, 379:19, 379:20, 435:20, 493:20
court [20] - 299:16, 300:3, 301:12, 322:19, 380:14, 380:16, 435:11, 435:17, 436:5, 436:7, 436:9, 436:25, 437:5, 440:2, 440:3, 453:19, 465:21, 574:22, 574:25, 608:12
court's [1] - 436:11
coverage [2] - 400:24, 402:18
covered [5] - 388:15, 632:19, 633:6, 654:25, 655:5
covering [1] - 527:21
covers [1] - 528:5
create [1] - 611:5
created [4] - 419:13, 421:8, 488:23
creating [7] - 374:7, 425:14, 425:18, 437:14, 488:25, 559:18, 559:21
Credit [3] - 542:12, 577:2, 656:19
credit [23] - 382:15, 384:17, 385:5, 386:13, 387:13, 445:19, 447:4, 447:5, 448:17, 472:14, 473:22, 524:8, 542:10, 542:24, 625:3, 625:4, 631:21, 632:8, 633:19, 656:17, 660:13, 662:8
creditor [1] - 417:18
crime [4] - 454:9, 454:12, 454:23, 456:6
criminal [1] - 301:15
crossed [1] - 385:25
crying [3] - 460:20, 607:15, 614:12
curious [2] - 428:14, 554:13
current [1] - 526:3
Customer [3] - 308:19, 332:23, 620:4
customer [159] - 300:24, 306:23, 308:20, 309:3, 309:6, 310:2, 316:18, 316:20, 316:25, 320:20, 321:2, 329:2, 332:12, 332:22, 333:2, 333:3, 333:21, 334:15, 335:2, 335:4, 335:9, 335:10, 336:5, 336:6, 336:7, 336:11, 338:15, 339:17, 340:19, 354:12, 355:20, 355:24, 356:2, 356:4, 360:14, 360:23, 361:7, 362:2, 362:6, 364:9, 372:13, 372:16, 382:14, 383:2, 383:17, 389:24, 390:2, 390:22, 390:23, 391:15, 395:11, 401:16, 406:22, 406:23, 407:8, 416:14, 419:5, 419:6, 420:2, 420:16, 420:17, 420:19, 421:21, 421:23, 423:20, 424:4, 426:2, 426:9, 426:11, 427:18, 427:20, 430:9, 430:22, 430:25, 431:9, 433:3, 433:23, 442:11, 448:13, 459:14, 459:15, 459:18, 459:21, 464:24, 465:2, 467:25, 468:10, 469:12, 469:14, 474:24, 496:12, 507:22, 507:23, 530:7, 530:8, 530:10, 540:11, 540:19, 540:25, 541:4, 542:4, 542:5, 542:21, 542:22, 542:23, 543:5, 543:23, 543:24, 544:3, 544:5, 544:7, 544:18, 545:13, 559:13, 559:15, 590:15, 590:21, 591:13, 598:12, 600:12, 603:15, 606:2, 619:10, 619:11, 622:5, 623:13, 624:25, 626:21, 628:2, 632:11, 634:6, 634:7, 635:9, 635:11, 635:12, 640:21, 646:6, 646:7, 652:15, 653:9, 653:11, 654:11, 657:6, 659:10, 659:13, 659:15, 659:21, 662:11, 662:13, 665:15, 665:16, 678:21, 679:3, 681:10, 685:12, 689:7, 689:10
customer's [5] - 364:6, 367:19, 468:8, 468:13, 653:14
customers [29] - 339:6, 341:5, 353:12, 370:13, 394:4, 395:16, 421:14, 430:2, 464:22, 468:16, 470:12, 470:20, 470:23, 471:2, 471:3, 471:4, 471:8, 471:11, 472:5, 485:17, 541:22, 553:16, 646:24, 648:4, 655:19, 655:20, 656:5, 656:6
customers' [2] - 328:4, 328:11
cut [12] - 520:14, 565:14, 565:16, 566:22, 569:4, 569:5, 569:11, 569:20, 569:23, 570:21, 571:3

D

D-A-N-I [1] - 663:12
d/b/a [1] - 297:20
DA [7] - 340:23, 353:19, 426:5, 426:7, 532:6, 555:23, 556:19
Dad [1] - 485:6
daily [1] - 645:14
damages [1] - 527:3
Dani [5] - 663:11, 663:16, 663:17, 663:20, 664:8
date [46] - 304:12, 307:11, 309:24, 310:4, 316:5, 316:9, 331:25, 358:10, 362:18, 364:18, 366:15, 379:16, 381:20, 390:13, 398:2, 408:17, 418:2, 423:21, 423:23, 423:25, 472:25, 474:14, 502:24, 538:5, 545:25, 546:5, 557:24, 558:3, 558:8, 583:11, 583:15, 585:10, 585:11, 586:13, 591:25, 592:6, 592:10, 597:13, 620:21, 629:5, 634:2, 641:4, 651:20, 651:25, 675:22
DATE [1] - 295:22
dated [15] - 308:11, 331:23, 366:13, 545:23, 546:3, 569:17, 591:22, 592:3, 592:8, 685:16, 686:22, 686:23, 687:7, 687:9, 687:10
dates [3] - 375:24, 629:24, 688:23
daughter [12] - 299:22, 300:16, 341:24, 377:9, 377:12, 433:23, 471:24, 484:8, 551:11, 578:8, 597:25, 666:3
days [9] - 438:2, 438:12, 471:25, 484:11, 575:9, 645:2, 645:8, 645:18, 665:18
dead [1] - 596:19
deal [53] - 356:20, 356:24, 388:6, 393:3, 393:8, 393:9, 393:10, 393:11, 422:16, 432:8, 459:13, 459:22, 466:16, 468:5, 468:6, 472:4, 472:19, 473:24, 475:8, 475:10, 476:5, 476:6, 477:17, 477:25, 530:11, 539:18, 540:16, 540:18, 551:16, 551:18, 562:19, 562:20, 562:23, 590:13, 598:10, 599:11, 619:19, 623:3, 624:2, 628:7, 631:14, 634:10, 645:11, 646:20, 648:17, 649:19, 649:20, 651:4, 651:8, 651:12, 672:3, 672:8
dealer [91] - 308:14, 309:8, 309:13, 310:3, 310:8, 314:13, 355:15, 355:18, 393:24, 402:19, 402:22, 426:20, 427:19, 488:3, 497:10, 498:11, 501:14, 501:24, 504:3, 504:6, 504:8, 504:10, 504:13, 504:17, 504:21, 505:3, 505:15, 505:17, 505:21, 506:2, 506:6, 506:9, 506:10, 506:16, 507:6, 508:2, 518:4, 518:10, 520:6, 520:10, 521:8, 521:15, 521:16, 521:21, 521:22, 522:2, 522:14, 522:18, 523:6, 524:8, 524:16, 524:20, 525:8, 525:16, 527:14, 527:15, 527:20, 528:7, 528:9, 528:20, 529:5, 529:8, 529:9, 529:15, 566:17, 576:11, 576:16, 581:8, 581:14, 581:18, 581:23, 582:2, 582:22, 582:25, 583:3, 585:4, 587:9, 587:11, 590:10, 591:4, 592:13, 592:16, 599:8, 630:20, 632:4, 632:11, 660:22
Dealer [20] - 412:23, 412:25, 413:4, 503:17, 504:11,

506:14, 518:20, 525:2, 525:4, 525:6, 526:21, 526:23, 526:24, 535:17, 535:19, 583:8, 583:12, 585:3, 687:3, 687:4
dealer's [9] - 506:13, 506:24, 525:14, 527:9, 528:5, 528:23, 529:14, 586:8, 587:3
Dealer's [1] - 521:11
dealers [2] - 576:13, 638:3
dealership [147] - 301:2, 312:8, 312:11, 312:15, 314:14, 328:10, 329:2, 331:7, 332:22, 335:6, 336:4, 339:22, 343:18, 345:17, 353:3, 361:10, 373:9, 373:10, 373:20, 382:19, 382:20, 382:23, 383:2, 383:14, 383:23, 384:12, 384:25, 385:9, 385:10, 390:15, 391:10, 391:24, 392:4, 392:8, 392:22, 392:25, 396:20, 397:9, 397:12, 401:9, 401:13, 401:17, 401:22, 402:4, 403:3, 403:7, 404:7, 407:11, 408:8, 415:10, 417:13, 420:14, 426:13, 427:21, 428:21, 428:24, 429:2, 429:18, 430:9, 432:14, 440:25, 441:5, 449:6, 449:10, 460:18, 460:22, 473:4, 473:11, 481:13, 481:16, 485:18, 485:24, 486:9, 488:13, 489:5, 489:6, 489:7, 494:10, 494:12, 494:13, 495:21, 520:14, 522:10, 540:25, 548:20, 551:13, 552:7, 552:11, 553:20, 553:24, 553:25, 556:12, 562:7, 562:13, 562:16, 563:15, 563:18, 565:15, 588:3, 591:6, 591:7, 591:11, 595:4, 601:11, 604:10, 606:18, 608:14, 608:16, 611:6, 612:10, 616:3, 616:9, 616:25, 617:11, 618:11, 630:12, 631:19, 632:2, 633:6, 633:18, 634:21, 634:24, 637:19, 638:2, 639:18, 642:5, 642:23, 644:12, 646:16, 656:4, 656:15, 656:22, 657:3, 657:8, 657:9, 658:14, 658:22, 659:22, 664:24, 665:10, 672:2, 680:8, 681:3, 681:4, 688:8, 688:9, 689:18
dealership's [5] - 363:3, 393:13, 398:23, 420:8, 428:16
dealerships [18] - 396:5, 411:19, 485:14, 485:19, 509:9, 519:19, 549:3, 570:2, 571:5, 588:8, 588:21, 588:23, 635:3, 638:2, 648:5, 656:6, 657:7, 662:17
Dealerships [1] - 410:16
DealerTrack [48] - 472:16, 473:16, 473:20, 473:21, 474:12, 474:23, 476:9, 476:21, 619:3, 619:5, 619:8, 619:9, 620:19, 625:5, 625:18, 625:19, 626:3, 627:24, 628:3, 628:4, 628:6, 628:9, 628:23, 629:2, 630:7, 630:8, 630:10, 631:2, 631:9, 631:11, 631:15, 631:18, 631:24, 633:7, 633:14, 633:24, 636:23, 638:13, 638:20, 639:6, 639:10, 640:6, 640:17, 643:12, 643:13, 686:12, 687:12, 687:14
dealing [3] - 329:2, 377:17, 518:9
deals [8] - 353:2, 396:24, 459:10, 459:11, 460:17, 520:15, 634:11
death [3] - 605:25, 606:2, 606:3
December [5] - 432:24, 463:8, 553:5, 567:16, 663:24
decide [1] - 661:9
decided [3] - 513:12, 615:23, 628:17
decides [1] - 543:16
deciding [1] - 664:21
decision [1] - 632:7
default [1] - 527:9
defect [1] - 300:24
defend [3] - 526:25, 528:8, 528:21
defendant [2] - 590:6, 688:17
DEFENDANT'S [2] - 686:18, 687:2
Defendant's [38] - 502:23, 503:2, 505:16, 509:13, 511:11, 545:24, 546:4, 546:23, 546:25, 547:12, 548:18, 583:9, 583:13, 583:19, 583:20, 591:24, 592:5, 592:9, 593:12, 593:19, 600:2, 600:17, 600:25, 601:2, 602:7, 620:20, 625:10, 633:25, 636:24, 641:3, 641:19, 643:4, 651:19, 651:24, 652:5, 652:19, 653:25, 657:18
Defendant(s) [6] - 295:7, 295:11, 295:16, 295:21, 296:6, 296:10
Defendant/Actions [2] - 297:19, 298:15
Defendants [1] - 296:14
Defendants/Action [1] - 298:9
Defendants/Actions [1] - 298:4
defending [2] - 527:16, 606:10
deference [1] - 575:9
define [1] - 547:19
defraud [5] - 601:12, 601:14, 603:20, 604:2, 604:9
defrauded [11] - 533:7, 538:25, 616:5, 616:9, 676:24, 677:18, 678:4, 678:14, 679:4, 679:6, 680:2
defrauding [4] - 469:19, 469:24, 469:25, 609:6
degree [2] - 482:18, 482:19
delayed [1] - 508:13
Demand [1] - 545:18
demand [24] - 393:17, 394:9, 394:14, 405:16, 453:13, 507:6, 507:10, 508:21, 508:24, 509:11, 525:16, 525:23, 545:16, 546:17, 548:12, 548:15, 548:21, 549:2, 590:3, 590:5, 591:3, 599:14, 599:16, 660:12
demanded [3] - 395:7, 430:20, 453:8
demanding [1] - 567:8
demands [8] - 363:2, 398:25, 420:9, 450:16, 545:15, 589:22, 599:19, 599:23
denied [2] - 378:20, 378:21
deny [3] - 631:20, 632:8, 644:22
Department [8] - 317:7, 317:10, 318:17, 319:21, 319:24, 453:5, 641:2, 687:17
department [7] - 393:24, 565:16, 603:20, 611:3, 618:14, 648:8, 648:12
depended [1] - 402:8
dependent [1] - 396:12
deposed [2] - 637:5, 637:7
deposit [5] - 333:7, 365:15, 365:25, 368:19, 421:20
deposited [1] - 372:16
DEPOSITION [1] - 296:13
deposition [37] - 299:15, 300:8, 300:10, 300:18, 300:19, 304:19, 314:24, 321:6, 321:15, 327:14, 327:15, 329:16, 354:4, 377:20, 455:4, 455:8, 455:11, 455:17, 455:22, 531:14, 550:6, 550:12, 550:18, 575:11, 575:16, 591:2, 600:18, 600:19, 643:5, 643:10, 652:6, 652:20, 674:24, 682:8, 682:24, 683:5, 684:10
DeSantos [10] - 642:13, 642:17, 642:22, 657:25, 658:4, 658:6, 658:9, 658:12, 658:15, 658:23
Describe [1] - 399:18
describe [2] - 305:5, 495:7
described [3] - 524:13, 689:12, 689:18
DESCRIPTION [6] - 685:10, 686:3, 686:18, 687:2, 688:3, 689:3
Details [2] - 408:15, 686:6
Detective [4] - 555:25, 556:3, 556:10, 556:16
determine [1] - 578:15
determined [1] - 589:7
determining [2] - 580:9, 580:13
deterrent [3] - 354:25,

407:17, 652:9
detriment [1] - 656:22
device [1] - 439:2
Dewan [9] - 341:14, 343:22, 343:23, 553:9, 668:16, 668:21, 668:22, 668:25
Dewan's [2] - 553:10, 553:11
difference [9] - 328:23, 332:9, 332:19, 362:20, 392:4, 392:12, 392:23, 398:19, 418:21
Different [1] - 589:19
different [34] - 330:22, 331:8, 331:18, 333:25, 353:12, 393:11, 400:7, 400:12, 401:20, 402:3, 404:17, 421:21, 433:7, 475:16, 476:21, 477:2, 477:7, 489:3, 489:19, 516:12, 519:16, 546:22, 552:12, 572:4, 586:24, 589:16, 619:12, 628:15, 630:6, 631:13, 653:5, 660:25
differently [3] - 461:2, 461:12, 461:19
direct [5] - 327:3, 327:20, 445:15, 454:23, 483:23
directed [2] - 319:13, 484:3
directing [2] - 462:11, 479:12
direction [1] - 555:19
directly [5] - 380:6, 436:16, 580:21, 646:14, 650:12
Dis [1] - 476:17
disappear [1] - 628:22
disclaimer [2] - 384:15, 605:5
disclose [1] - 398:19
disclosed [1] - 389:4
disclosing [1] - 356:14
disclosure [8] - 382:3, 382:4, 382:9, 382:11, 382:13, 383:9, 383:13, 383:16
disclosures [1] - 411:18
discontinue [1] - 339:6
discover [1] - 536:6
discovered [4] - 417:12, 433:18, 536:11, 537:2
discovery [9] - 324:15, 325:16, 359:5, 363:2, 363:9, 398:25, 405:5, 409:12, 606:8
discretion [1] - 589:7
discuss [4] - 387:21, 409:13, 656:5, 673:16
discussed [6] - 466:24, 521:14, 576:8, 624:11, 634:18, 673:15
discussing [2] - 503:25, 616:3
discussion [25] - 358:12, 403:16, 408:18, 442:9, 457:2, 464:5, 474:15, 517:19, 517:24, 518:3, 518:7, 549:19, 573:23, 583:16, 583:23, 593:16, 618:24, 623:14, 623:23, 635:22, 637:18, 649:16, 655:7, 664:23, 665:4
discussions [3] - 542:3, 633:17, 655:18
disks [1] - 645:4
Dispatcher [2] - 476:18, 476:19
dispute [1] - 592:23
distress [2] - 613:12, 613:19
DISTRICT [2] - 295:2, 295:2
district [4] - 432:7, 563:21, 576:4, 576:6
disturbed [1] - 422:19
disturbing [2] - 422:22, 422:24
division [1] - 489:25
DLR [11] - 417:19, 419:14, 421:9, 422:12, 422:15, 427:20, 427:21, 429:16, 470:14, 556:14, 559:19
DMV [12] - 484:16, 550:21, 550:24, 551:4, 551:6, 551:8, 564:10, 564:16, 564:18, 636:4, 642:7
document [108] - 305:6, 310:21, 315:25, 316:11, 319:18, 324:2, 324:7, 324:10, 324:20, 325:12, 325:14, 325:21, 325:23, 326:3, 326:9, 326:12, 326:17, 327:6, 327:7, 327:21, 329:15, 334:23, 345:22, 355:14, 355:16, 357:22, 358:5, 359:11, 362:3, 390:15, 395:15, 396:2, 396:9, 410:16, 410:23, 411:16, 411:20, 412:12, 415:7, 417:10, 420:6, 420:7, 473:6, 473:8, 473:23, 474:18, 474:21, 477:5, 494:3, 502:19, 503:5, 503:20, 504:5, 519:17, 545:21, 557:8, 558:17, 586:23, 594:12, 624:13, 624:20, 625:5, 625:15, 625:21, 625:22, 626:7, 626:9, 627:2, 627:6, 627:11, 627:19, 627:24, 630:8, 631:24, 632:20, 636:11, 636:15, 636:24, 640:3, 640:5, 641:11, 641:16, 641:22, 642:11, 642:21, 643:11, 643:13, 643:20, 644:2, 644:5, 644:14, 652:21, 653:8, 654:5, 654:9, 654:16, 654:21, 654:25, 655:4, 657:20, 658:17, 658:22, 667:2, 685:13, 686:13, 686:15, 686:20
Document [41] - 304:8, 331:21, 358:8, 381:18, 390:10, 408:13, 417:23, 472:23, 474:11, 502:21, 546:3, 557:23, 558:6, 583:8, 583:12, 591:21, 592:2, 592:7, 620:18, 633:23, 640:24, 651:16, 651:21, 685:11, 685:15, 685:23, 686:5, 686:7, 686:9, 686:11, 686:19, 687:3, 687:4, 687:6, 687:8, 687:10, 687:12, 687:14, 687:16, 687:18, 687:21
documentation [2] - 588:13, 631:19
documents [56] - 304:15, 304:16, 305:12, 305:16, 311:8, 328:17, 330:18, 332:15, 354:7, 354:16, 354:17, 354:20, 354:22, 357:9, 357:14, 360:9, 361:2, 361:17, 390:17, 420:9, 421:8, 477:11, 493:9, 506:22, 541:12, 546:15, 579:23, 583:19, 584:6, 584:19, 584:22, 586:15, 587:17, 592:20, 593:3, 593:11, 593:19, 593:21, 593:23, 594:2, 600:22, 607:9, 607:13, 617:10, 617:24, 633:8, 639:7, 639:16, 640:19, 644:12, 644:18, 649:11, 658:13, 665:9, 665:13, 666:14
Documents [1] - 584:12
DOCUMENTS [2] - 688:2, 689:2
dollar [3] - 403:12, 416:18, 615:2
dollars [4] - 352:7, 456:19, 456:22, 671:12
done [20] - 300:15, 340:20, 421:14, 461:2, 461:12, 462:13, 508:16, 532:14, 551:16, 559:24, 575:13, 593:14, 612:18, 625:6, 628:12, 634:10, 644:20, 673:12, 675:4, 675:10
DONG [2] - 296:2, 297:4
Dong [42] - 299:20, 529:24, 529:25, 530:15, 532:22, 532:25, 534:3, 534:8, 534:11, 534:15, 536:9, 537:11, 537:23, 538:2, 538:8, 538:13, 538:17, 538:23, 540:3, 545:16, 546:24, 547:20, 550:2, 550:7, 550:13, 550:19, 551:3, 551:12, 552:2, 552:7, 552:11, 553:20, 553:23, 557:6, 557:14, 560:24, 565:11, 566:21, 570:22, 629:16, 686:14, 686:16
Dong's [8] - 531:20, 531:24, 535:13, 560:6, 563:21, 564:11, 568:23, 571:6
dot [8] - 383:5, 383:7, 383:9, 383:15, 384:14, 384:23, 448:23, 656:19
double [1] - 331:16
double-sided [1] - 331:16
down [33] - 299:16, 300:4, 321:18, 334:13, 334:14, 334:18, 335:11, 343:6, 353:11, 386:4, 386:10, 404:6, 433:24, 443:2, 459:10, 483:19, 526:22, 539:8, 554:25, 555:13, 574:23, 575:2, 585:15, 593:24, 596:7,

596:14, 596:18, 597:2, 600:25, 619:13, 624:15, 627:25, 682:14
downpayment [7] - 365:23, 366:11, 367:8, 382:7, 382:14, 384:10, 477:22
drag [1] - 674:9
draw [3] - 325:12, 373:18, 374:20
drawn [2] - 374:4, 374:6
drew [4] - 374:23, 375:22, 688:22, 689:4
drink [3] - 442:24, 444:13, 444:15
drinking [8] - 442:18, 443:4, 443:9, 443:11, 443:15, 444:7, 444:8
Driscoll [4] - 555:24, 555:25, 556:2, 556:10
Driscoll's [2] - 556:4, 556:17
Drive [2] - 298:11, 299:6
drive [4] - 449:13, 481:8, 644:25, 645:18
driver [4] - 612:10, 612:11, 619:17, 666:20
Driver [1] - 474:8
driver's [4] - 459:17, 459:20, 640:18, 644:13
Driver's [1] - 542:16
driving [1] - 544:8
drugs [2] - 301:18, 302:3
drunk [1] - 444:9
duly [2] - 299:3, 690:12
duplicate [1] - 508:15
duplicating [1] - 516:25
During [4] - 406:25, 540:10, 580:3, 580:16
during [13] - 304:19, 368:9, 379:3, 406:5, 428:9, 443:4, 443:9, 493:21, 581:7, 600:22, 629:17, 630:2, 650:2
duties [2] - 506:5, 587:12

E

E-Loan [1] - 448:24
E-loan-dot-com [2] - 448:23, 656:19
East [2] - 488:19, 494:25
EASTERN [1] - 295:2
EBT [1] - 295:23
EDER [3] - 296:19, 690:7, 690:22
edification [1] - 586:21
eight [8] - 394:23, 438:2, 438:12, 448:15, 448:20, 645:2, 645:18, 655:9
Either [3] - 546:20, 618:3, 646:6
either [18] - 337:3, 366:6, 373:23, 400:24, 405:17, 509:9, 510:16, 541:5, 546:20, 547:3, 581:2, 588:18, 593:6, 597:5, 657:6, 680:16, 689:6
electronic [2] - 597:16, 628:5
electronically [5] - 628:12, 630:9, 630:11, 637:2, 639:11
elsewhere [1] - 388:5
Eltouby [432] - 299:11, 300:1, 301:1, 302:1, 303:1, 304:1, 305:1, 306:1, 307:1, 308:1, 309:1, 310:1, 311:1, 312:1, 313:1, 314:1, 315:1, 316:1, 316:7, 317:1, 318:1, 319:1, 320:1, 321:1, 322:1, 323:1, 324:1, 324:16, 325:1, 326:1, 326:2, 327:1, 328:1, 329:1, 330:1, 331:1, 332:1, 333:1, 334:1, 335:1, 336:1, 337:1, 338:1, 339:1, 340:1, 341:1, 342:1, 343:1, 343:14, 344:1, 345:1, 346:1, 346:19, 347:1, 347:4, 348:1, 349:1, 350:1, 351:1, 352:1, 353:1, 354:1, 355:1, 356:1, 357:1, 358:1, 359:1, 360:1, 361:1, 362:1, 363:1, 363:14, 364:1, 365:1, 366:1, 367:1, 368:1, 368:6, 369:1, 369:17, 370:1, 371:1, 372:1, 373:1, 374:1, 375:1, 376:1, 377:1, 378:1, 378:8, 379:1, 380:1, 381:1, 382:1, 383:1, 384:1, 385:1, 386:1, 387:1, 388:1, 389:1, 390:1, 391:1, 392:1, 393:1, 394:1, 395:1, 396:1, 397:1, 398:1, 399:1, 400:1, 401:1, 402:1, 403:1, 404:1, 405:1, 405:24, 406:1, 407:1, 408:1, 409:1, 410:1, 411:1, 412:1, 413:1, 414:1, 415:1, 416:1, 417:1, 418:1, 419:1, 420:1, 421:1, 422:1, 423:1, 424:1, 425:1, 426:1, 427:1, 428:1, 429:1, 430:1, 431:1, 432:1, 433:1, 434:1, 435:1, 436:1, 437:1, 438:1, 439:1, 440:1, 441:1, 442:1, 443:1, 444:1, 445:1, 446:1, 447:1, 448:1, 449:1, 450:1, 450:24, 451:1, 452:1, 453:1, 454:1, 455:1, 456:1, 457:1, 458:1, 459:1, 459:4, 460:1, 461:1, 462:1, 463:1, 464:1, 464:18, 465:1, 466:1, 467:1, 468:1, 469:1, 470:1, 470:17, 471:1, 471:6, 472:1, 473:1, 474:1, 474:17, 475:1, 475:18, 476:1, 477:1, 478:1, 479:1, 479:10, 479:23, 480:1, 481:1, 482:1, 482:13, 482:24, 483:1, 484:1, 485:1, 486:1, 487:1, 487:5, 488:1, 489:1, 490:1, 490:14, 490:18, 491:1, 492:1, 493:1, 494:1, 495:1, 496:1, 497:1, 498:1, 499:1, 500:1, 501:1, 502:1, 502:25, 503:1, 504:1, 505:1, 506:1, 507:1, 508:1, 509:1, 510:1, 511:1, 512:1, 513:1, 514:1, 514:14, 515:1, 516:1, 517:1, 518:1, 519:1, 520:1, 521:1, 522:1, 523:1, 524:1, 525:1, 526:1, 527:1, 528:1, 529:1, 530:1, 531:1, 532:1, 533:1, 534:1, 535:1, 536:1, 537:1, 538:1, 539:1, 540:1, 541:1, 542:1, 543:1, 544:1, 545:1, 546:1, 547:1, 548:1, 549:1, 549:24, 550:1, 551:1, 552:1, 553:1, 554:1, 555:1, 556:1, 557:1, 558:1, 559:1, 560:1, 561:1, 562:1, 563:1, 564:1, 565:1, 566:1, 567:1, 568:1, 569:1, 570:1, 571:1, 572:1, 573:1, 574:1, 574:3, 575:1, 576:1, 577:1, 578:1, 579:1, 579:15, 580:1, 581:1, 582:1, 583:1, 584:1, 585:1, 586:1, 587:1, 588:1, 589:1, 590:1, 591:1, 592:1, 593:1, 594:1, 595:1, 596:1, 597:1, 598:1, 599:1, 600:1, 601:1, 602:1, 603:1, 604:1, 605:1, 606:1, 607:1, 608:1, 609:1, 610:1, 611:1, 612:1, 613:1, 614:1, 615:1, 616:1, 617:1, 618:1, 619:1, 620:1, 621:1, 622:1, 623:1, 624:1, 625:1, 626:1, 627:1, 628:1, 629:1, 630:1, 631:1, 632:1, 633:1, 634:1, 635:1, 636:1, 637:1, 638:1, 639:1, 640:1, 641:1, 642:1, 643:1, 644:1, 645:1, 646:1, 647:1, 648:1, 649:1, 650:1, 651:1, 652:1, 652:8, 653:1, 654:1, 655:1, 656:1, 657:1, 658:1, 659:1, 660:1, 661:1, 662:1, 663:1, 664:1, 665:1, 665:8, 665:23, 666:1, 667:1, 668:1, 669:1, 670:1, 671:1, 672:1, 673:1, 673:6, 673:19, 674:1, 675:1, 675:4, 675:7, 676:1, 677:1, 677:11, 678:1, 678:13, 679:1, 680:1, 681:1, 681:13, 681:17, 681:23, 682:1, 683:1, 688:20, 688:22, 689:4, 689:10, 689:18
ELTOUBY [11] - 295:23, 296:15, 298:4, 298:5, 298:10, 298:10, 684:8, 684:16, 685:3, 690:10
Eltouby's [1] - 343:14
email [5] - 597:17, 597:21, 597:24, 598:2, 599:2
Email [1] - 597:19
emails [1] - 597:22
emotional [2] - 613:12, 613:19
employ [1] - 629:12
employed [2] - 347:7, 491:21
employee [7] - 344:23, 346:2, 351:11, 352:18, 352:21, 483:23, 688:12
employees [16] - 303:13, 303:22, 337:19, 338:5, 338:8, 338:13, 338:18, 338:22, 345:10, 346:9, 347:18, 374:18, 440:15, 440:16, 490:8, 635:14
employer [1] - 455:18
enclosed [1] - 547:25
encouraged [1] - 313:20
end [8] - 428:17, 431:18, 432:4, 432:24, 433:22, 459:22, 461:16, 681:7
End [1] - 432:23
ended [3] - 498:24, 672:15, 680:8
enforce [14] - 337:12, 337:20, 338:5,

338:9, 338:17, 340:3, 340:8, 341:4, 342:12, 395:10, 524:5, 589:3, 591:13, 659:5
enforceable [2] - 523:20, 524:4
enforced [2] - 337:17, 395:16
enforcing [1] - 592:16
engineering [1] - 482:18
English [10] - 429:3, 430:13, 430:15, 530:9, 560:13, 564:25, 565:8, 565:13, 567:6, 663:13
enroll [1] - 512:3
ensure [1] - 523:6
entered [2] - 581:3, 581:22
Entered [1] - 523:17
entire [2] - 318:9, 393:21
entities [5] - 371:3, 371:4, 500:19, 502:8, 519:16
entitle [1] - 591:11
entitled [20] - 304:8, 315:25, 346:24, 347:6, 368:24, 408:14, 525:5, 583:8, 583:12, 640:24, 651:16, 651:21, 685:11, 685:13, 686:6, 687:3, 687:4, 687:16, 687:18, 687:21
entity [6] - 347:19, 347:20, 352:11, 352:16, 494:18, 534:25
entrance [1] - 481:13
erase [1] - 437:19
erased [6] - 438:2, 438:11, 438:18, 440:8, 440:12, 645:18
erases [1] - 644:25
Erickson [14] - 468:22, 576:2, 576:3, 576:8, 590:11, 595:3, 595:11, 595:12, 598:5, 598:25, 646:15, 646:19, 648:15, 650:15
error [7] - 309:22, 310:10, 310:11, 310:13, 310:20, 311:3, 646:21
Error [1] - 311:10
Especially [1] - 346:14
especially [1] - 402:2
ESQ [6] - 297:6, 297:16, 297:22, 298:7, 298:12, 298:17
ESQS [1] - 298:14
established [2] - 366:20, 487:23
Estrada [101] - 299:23, 340:7, 340:12, 341:4, 341:11, 344:3, 352:9, 352:20, 356:24, 357:8, 357:22, 359:22, 359:23, 360:8, 360:25, 361:17, 363:16, 417:13, 419:14, 419:25, 421:8, 425:14, 426:4, 430:13, 430:17, 430:20, 432:22, 433:2, 433:11, 433:19, 436:2, 436:4, 436:8, 436:15, 436:25, 437:10, 440:5, 442:15, 443:3, 443:9, 443:13, 443:14, 444:7, 444:13, 445:6, 446:19, 447:3, 447:7, 447:12, 447:14, 448:8, 459:5, 461:5, 461:17, 461:21, 461:25, 462:6, 462:23, 463:4, 463:10, 464:25, 467:7, 469:19, 469:24, 470:11, 470:19, 470:25, 471:8, 471:11, 484:2, 530:5, 531:4, 531:17, 531:19, 532:3, 532:10, 532:17, 533:4, 536:7, 538:25, 554:4, 554:6, 555:2, 555:5, 555:6, 555:8, 555:14, 555:16, 556:7, 559:21, 562:15, 567:2, 604:25, 624:8, 629:11, 629:18, 630:3, 649:18, 658:3, 658:14, 669:11
Estrada's [4] - 434:3, 440:17, 440:22, 650:2
et [6] - 295:6, 295:10, 295:15, 295:20, 296:5, 296:9
etc [1] - 591:10
evidence [2] - 347:6, 632:13
EX [2] - 381:14, 381:15
EX-L [2] - 381:14, 381:15
Exactly [11] - 333:16, 336:19, 391:13, 391:15, 414:10, 417:5, 435:10, 463:24, 560:11, 627:4, 628:22
exactly [31] - 342:22, 345:22, 350:17, 351:25, 375:11, 377:24, 383:3, 408:10, 433:5, 459:19, 467:23, 468:11, 476:3, 498:13, 530:18, 539:7, 539:8, 539:10, 559:13, 559:18, 565:8, 569:14, 569:21, 569:22, 571:13, 603:10, 619:15, 619:17, 629:5, 667:3, 667:5
examination [2] - 690:11, 690:13
EXAMINATION [7] - 299:10, 464:17, 487:4, 549:23, 574:2, 657:15, 665:7
Examination [1] - 685:4
examined [1] - 299:7
Example [1] - 356:11
example [15] - 361:6, 391:6, 391:15, 392:16, 395:9, 397:7, 397:21, 402:25, 403:19, 403:22, 408:11, 485:22, 522:16, 587:22, 669:24
Except [5] - 311:2, 675:23, 675:25, 676:6, 676:10
except [5] - 304:23, 330:10, 537:7, 675:21, 676:11
exclusively [1] - 353:5
excuse [3] - 308:19, 425:8, 675:7
Excuse [6] - 312:9, 315:15, 372:6, 424:3, 424:14, 667:3
executed [3] - 496:6, 501:14, 504:13
Exhibit [162] - 304:11, 304:14, 304:21, 315:24, 316:4, 316:7, 316:12, 317:2, 329:23, 330:9, 331:20, 331:24, 332:3, 334:8, 335:22, 336:3, 354:18, 355:3, 355:14, 357:21, 358:7, 358:9, 358:15, 358:16, 358:17, 358:22, 358:23, 359:2, 359:6, 362:5, 362:14, 362:17, 362:20, 362:21, 363:5, 363:17, 363:18, 366:16, 366:20, 381:17, 381:19, 381:23, 385:12, 385:13, 387:25, 389:16, 390:9, 390:12, 390:14, 390:19, 397:25, 398:6, 398:8, 398:10, 398:15, 398:20, 398:22, 399:2, 407:19, 408:16, 410:3, 411:4, 415:21, 417:25, 418:4, 419:9, 423:11, 423:12, 423:14, 425:5, 425:6, 425:10, 425:15, 425:21, 425:22, 427:24, 428:4, 428:8, 428:9, 428:10, 428:13, 472:22, 472:24, 473:2, 474:10, 474:13, 474:18, 476:23, 477:7, 477:8, 502:23, 503:2, 505:17, 509:14, 511:11, 545:24, 546:4, 546:23, 546:25, 547:7, 547:10, 547:13, 547:24, 548:18, 557:22, 558:2, 558:5, 558:7, 558:10, 560:14, 561:20, 583:10, 583:14, 583:20, 583:21, 584:2, 584:3, 585:3, 586:7, 587:23, 591:24, 592:5, 592:9, 593:20, 594:6, 597:9, 600:3, 602:14, 602:17, 602:20, 602:25, 603:18, 606:12, 606:15, 619:22, 620:10, 620:15, 620:20, 623:9, 624:13, 625:10, 625:21, 626:2, 626:9, 627:2, 631:17, 633:25, 636:9, 636:25, 641:3, 641:7, 643:5, 643:9, 651:19, 651:24, 652:4, 652:5, 652:19, 653:25, 657:18
exhibit [17] - 304:18, 304:24, 308:6, 308:8, 308:9, 308:23, 315:23, 354:15, 358:3, 397:22, 417:22, 502:20, 503:11, 547:9, 547:15, 585:2, 651:15
Exhibits [10] - 329:16, 354:15, 354:19, 546:9, 583:25, 591:5, 592:12, 593:12, 600:17, 640:8
exhibits [3] - 304:5, 354:14, 652:7
EXHIBITS [2] - 685:9, 686:2
exist [2] - 405:7, 577:20
existed [1] - 502:6
existence [4] - 491:7, 493:17, 493:22, 539:16
existing [1] - 448:25
expedite [1] - 647:22
expend [1] - 593:4

expense [1] - 379:24
expenses [3] - 526:7, 527:3, 593:8
expensive [2] - 418:14, 418:15
experience [6] - 312:13, 315:5, 460:6, 507:24, 509:8, 660:21
expert [1] - 626:24
explain [17] - 302:11, 341:23, 384:13, 385:8, 385:10, 391:3, 404:16, 436:6, 448:11, 459:13, 469:10, 474:17, 474:20, 598:6, 615:20, 619:7, 634:7
explained [9] - 332:11, 332:21, 354:10, 355:19, 382:12, 387:12, 419:4, 425:23, 556:14
explaining [2] - 667:3, 667:5
Express [2] - 563:16, 639:15
extended [4] - 575:14, 606:23, 652:9, 671:8
Extended [1] - 671:10
extent [5] - 346:18, 346:22, 368:5, 369:5, 688:19
extra [1] - 539:10

F

F&I [37] - 308:3, 333:8, 334:5, 334:16, 335:12, 357:17, 357:18, 360:22, 361:8, 361:11, 363:16, 387:18, 390:4, 390:24, 395:18, 395:22, 404:24, 424:21, 459:6, 459:9, 459:12, 460:4, 471:6, 478:14, 512:9, 512:10, 541:5, 541:16, 542:4, 544:24, 562:8, 636:17, 642:19, 642:25, 648:16, 657:20, 657:22
F&I's [1] - 395:20
facility [2] - 622:5, 623:15
fact [3] - 329:7, 369:22, 524:16
failing [2] - 451:4, 458:4
failure [5] - 301:11, 450:25, 451:13, 451:18, 528:22
fair [1] - 506:19
fake [3] - 534:8, 534:13, 534:19
False [1] - 323:13
false [9] - 320:13, 320:15, 320:16, 320:24, 322:23, 322:24, 322:25, 323:8, 532:17
falsely [1] - 301:14
Family [1] - 418:14
famous [1] - 343:5
far [7] - 351:15, 538:15, 579:25, 605:20, 636:3, 637:22, 647:25
fast [2] - 391:16, 466:8
father [1] - 572:11
Fault [1] - 323:10
faulting [2] - 323:12, 323:14
Fax [1] - 639:14
faxed [1] - 564:18
February [13] - 366:13, 423:24, 550:9, 591:23, 592:4, 594:9, 594:10, 595:16, 595:25, 596:23, 597:2, 687:7, 687:9
Federal [6] - 379:18, 379:20, 435:19, 563:16, 639:14
federal [5] - 380:14, 380:16, 440:3, 451:4, 522:23
fee [5] - 412:14, 412:15, 415:7, 415:8
fees [11] - 371:8, 385:7, 413:16, 413:18, 415:2, 526:9, 526:19, 527:4, 592:15, 593:5, 593:8
female [1] - 620:25
few [1] - 487:14
fewer [2] - 499:6, 499:7
fide [1] - 523:17
field [1] - 566:16
fifteen [1] - 486:22
fifth [1] - 503:14
figure [1] - 440:7
file [17] - 345:19, 346:12, 354:22, 363:3, 398:23, 472:19, 473:25, 475:8, 475:10, 476:5, 476:6, 562:17, 562:18, 564:19, 571:8, 571:9, 688:10
filed [9] - 317:6, 437:9, 465:9, 465:11, 466:4, 466:9, 466:13, 467:10, 467:14
files [12] - 344:23, 344:25, 345:5, 345:7, 345:10, 345:15, 345:25, 346:7, 472:5, 477:18, 478:2, 688:9
fill [7] - 312:17, 312:22, 344:11, 375:17, 442:2, 619:9, 628:3
filled [10] - 385:14, 385:18, 473:3, 519:19, 519:21, 519:24, 542:23, 543:2, 543:11, 625:8
filling [3] - 520:5, 543:12, 623:8
fills [2] - 312:13, 618:18
final [4] - 329:4, 332:25, 530:11, 622:13
finalize [5] - 333:9, 334:6, 335:12, 386:13, 387:17
Finalize [1] - 334:2
finalized [1] - 334:16
finally [1] - 669:14
finance [72] - 303:18, 311:6, 311:7, 312:16, 312:17, 312:25, 313:4, 313:20, 314:18, 328:4, 328:11, 329:5, 334:17, 360:11, 360:12, 360:16, 360:19, 360:22, 382:6, 382:13, 387:2, 387:18, 387:22, 389:9, 392:16, 392:17, 392:21, 395:23, 396:8, 396:11, 396:16, 403:9, 416:13, 416:14, 436:7, 437:3, 443:4, 447:16, 453:4, 459:12, 460:5, 478:15, 540:17, 601:19, 602:2, 602:3, 602:6, 602:15, 603:8, 603:9, 603:11, 603:19, 603:22, 605:14, 618:13, 619:13, 623:6, 624:4, 625:2, 627:25, 640:4, 644:9, 648:2, 648:8, 648:11, 649:11, 649:19, 650:3, 668:19
financed [1] - 368:20
finances [1] - 590:20
Financial [13] - 328:8, 496:10, 496:11, 496:15, 496:17, 496:19, 496:22, 496:23, 496:25, 497:6, 497:19, 497:24, 576:23
financial [2] - 556:21, 630:6
Financing [1] - 628:10
financing [50] - 333:8, 389:5, 392:5, 392:13, 392:15, 397:13, 437:11, 443:9, 469:13, 470:20, 522:19, 522:21, 532:25, 533:11, 534:5, 534:15, 534:20, 540:9, 541:12, 576:9, 576:20, 586:16, 587:14, 588:18, 589:11, 593:5, 603:6, 603:16, 604:15, 604:16, 606:13, 609:8, 618:11, 618:15, 622:3, 623:4, 624:3, 624:6, 630:19, 633:11, 634:5, 635:5, 635:17, 635:20, 636:5, 639:18, 640:12, 659:3
Fine [3] - 315:3, 386:8, 431:12
fine [7] - 305:3, 398:9, 449:2, 457:18, 544:10, 665:20
finish [22] - 301:25, 430:3, 430:24, 434:13, 434:16, 444:21, 458:8, 466:19, 468:7, 469:9, 470:8, 492:20, 537:14, 537:16, 575:3, 575:5, 604:6, 612:20, 667:22, 675:9, 681:19, 683:4
Finish [1] - 434:16
finished [3] - 321:20, 453:6, 572:25
finishes [1] - 322:5
finishing [1] - 675:15
fire [9] - 431:22, 431:23, 432:21, 434:7, 434:22, 434:25, 435:3, 435:4, 466:6
firm [6] - 546:18, 547:6, 548:16, 621:4, 621:12, 621:14
first [54] - 308:23, 318:25, 332:23, 339:10, 343:24, 352:5, 358:23, 359:3, 359:7, 363:5, 365:4, 380:18, 386:13, 394:6, 394:17, 395:3, 395:9, 405:13, 423:22, 423:24, 424:2, 432:23, 464:23, 465:2, 465:24, 467:5, 467:16, 480:23, 487:22, 500:23, 503:11, 509:15, 511:4, 511:5, 515:25, 530:16, 531:13, 536:10, 541:25, 550:12, 557:20, 559:25, 560:2, 573:12, 573:14, 573:15, 575:19, 587:9, 599:17, 607:23, 625:3, 640:2, 658:21, 685:17
First [3] - 516:2,

516:4, 536:12
five [2] - 392:11, 615:2
Five [2] - 304:5, 304:6
five-thousand [1] - 615:2
fix [1] - 443:22
fixed [1] - 410:20
fixing [1] - 677:19
flat [2] - 468:23
floor [14] - 296:18, 297:10, 297:14, 298:16, 412:15, 412:17, 533:25, 535:6, 535:9, 535:11, 535:13, 535:15, 580:22, 581:3
folders [1] - 354:22
follow [9] - 375:20, 376:15, 544:20, 549:14, 550:3, 573:18, 573:19, 635:21, 657:16
follow-up [5] - 549:14, 550:3, 573:18, 573:19, 635:21
followed [1] - 450:16
Following [1] - 578:13
following [1] - 514:17
follows [1] - 299:8
force [1] - 338:8
forfeiture [10] - 337:5, 337:13, 337:21, 338:6, 338:15, 338:17, 340:3, 340:9, 341:4, 342:14
forged [5] - 532:3, 552:3, 552:13, 607:12, 617:24
forgery [2] - 617:10, 617:12
forget [1] - 416:21
Forget [2] - 340:16, 504:7
forging [1] - 550:14
form [56] - 302:14, 305:23, 321:4, 333:19, 355:2, 389:12, 409:22, 410:2, 410:5, 438:9, 438:20, 461:8, 470:22, 477:4, 478:23, 479:22, 483:3, 484:5, 539:3, 602:10, 603:24, 604:4, 604:7, 604:19, 607:21, 609:2, 609:10, 610:17, 611:9, 611:12, 611:17, 612:2, 612:17, 613:9, 616:11, 621:18, 626:6, 626:11, 626:14, 627:9, 627:13, 627:22, 632:23, 639:21, 649:23, 650:5, 653:17, 654:4, 655:22, 656:8, 659:8, 660:6, 666:17, 677:21, 678:8, 680:12
formal [1] - 450:16
forms [3] - 333:11, 333:15, 503:12
forth [8] - 368:13, 370:14, 370:16, 504:22, 588:25, 589:2, 592:22, 690:12
forward [4] - 462:16, 588:13, 596:13, 600:16
forwarding [3] - 596:11, 596:15, 597:4
four [6] - 304:16, 318:2, 394:23, 503:11, 615:2, 655:8
fourth [2] - 306:4, 518:19
frame [3] - 466:23, 467:4, 467:12
fraud [14] - 353:14, 353:16, 469:4, 471:18, 478:12, 480:7, 480:10, 480:12, 480:13, 480:14, 506:21, 536:8, 537:2, 679:21
frauded [9] - 677:3, 677:7, 678:11, 679:15, 679:18, 680:5, 680:24, 680:25
frauding [1] - 469:21
fraudulent [3] - 478:17, 478:19, 533:5
free [4] - 418:9, 590:17, 590:18, 681:15
freeze [2] - 508:12, 508:15
Freire [40] - 299:20, 359:4, 359:8, 359:9, 359:13, 363:8, 363:14, 364:12, 364:16, 366:24, 367:8, 369:7, 370:7, 370:20, 417:10, 417:24, 420:7, 421:24, 424:6, 426:22, 426:23, 427:13, 429:14, 429:15, 429:21, 529:24, 537:23, 538:2, 539:7, 540:5, 545:16, 547:2, 547:21, 550:2, 567:8, 567:17, 629:17, 685:18, 686:8
FREIRE [2] - 295:12, 297:4
Freire's [10] - 354:17, 354:24, 359:13, 359:25, 360:5, 362:23, 363:4, 363:7, 366:10, 539:4
friend [1] - 442:16
friends [7] - 491:11, 613:20, 614:17, 614:19, 615:15, 668:12, 669:3
front [22] - 304:14, 304:19, 305:18, 329:15, 329:17, 338:2, 338:3, 358:17, 359:6, 360:23, 362:3, 363:18, 385:12, 418:4, 423:15, 481:15, 509:14, 560:14, 608:11, 636:16, 636:17, 657:18
full [15] - 336:20, 342:23, 343:15, 458:4, 494:24, 615:9, 625:17, 625:22, 626:3, 626:6, 626:9, 626:13, 673:11, 674:14, 688:4
fund [3] - 531:21, 543:17, 544:13
funded [13] - 531:7, 531:9, 544:11, 544:18, 544:23, 544:25, 557:7, 560:9, 562:19, 562:20, 562:23, 563:2, 563:3
funding [9] - 422:16, 477:21, 532:18, 537:22, 539:17, 544:2, 544:4, 545:7, 551:18
Funding [5] - 412:23, 412:25, 413:4, 535:17, 535:19
funds [6] - 534:5, 534:24, 535:3, 535:4, 535:24, 659:3
Funds [1] - 534:22
furnish [1] - 343:13
future [1] - 659:6

G

GABRYS [2] - 295:17, 297:4
Gabrys [18] - 299:21, 574:7, 590:4, 616:13, 629:15, 633:5, 633:16, 633:24, 635:4, 637:5, 637:8, 640:10, 647:4, 651:8, 654:14, 654:15, 655:3, 687:15
Gabrys's [8] - 567:21, 567:24, 568:3, 568:5, 629:24, 636:14, 636:20, 644:17
Gaganmeet [12] - 304:9, 306:14, 306:22, 308:16, 308:20, 309:4, 309:5, 316:2, 316:22, 316:23, 685:12, 685:14
game [1] - 432:6
gate [1] - 555:13
General [1] - 578:21
general [11] - 402:25, 404:14, 506:8, 506:12, 539:12, 578:20, 587:10, 661:2, 661:21, 661:22, 662:16
generally [10] - 504:17, 506:4, 521:17, 540:8, 540:21, 543:9, 543:10, 548:13, 591:4, 664:11
gestures [1] - 574:24
girl [6] - 383:21, 531:11, 550:22, 567:5, 642:25
girlfriend [3] - 553:9, 553:10, 553:11
given [14] - 325:23, 354:20, 407:7, 411:18, 420:18, 423:7, 424:18, 426:3, 430:19, 478:5, 634:6, 636:6, 684:13, 690:14
GM [2] - 578:19, 578:20
god [1] - 322:3
Gold [4] - 322:10, 325:8, 436:16, 682:11
gonna [9] - 414:7, 531:7, 559:12, 559:25, 590:15, 631:6, 631:12, 681:15
Gonna [1] - 671:11
gotta [2] - 560:2, 564:6
grabbed [1] - 682:25
grandfather [2] - 496:9, 498:14
grandiose [1] - 321:23
grant [1] - 656:11
Great [1] - 314:16
green [1] - 631:5
GROSSMAN [41] - 297:18, 297:22, 332:13, 335:15, 335:20, 335:23, 378:3, 442:6, 574:2, 582:11, 583:6, 584:8, 584:11, 584:14, 589:4, 591:16, 591:19, 592:24, 593:14, 595:17, 595:22, 602:13, 604:5, 606:14, 606:16, 612:18, 620:16, 623:22, 633:21, 639:25, 640:23, 643:7, 647:21, 650:20, 650:24, 651:14, 653:22, 654:8, 657:11, 659:7, 685:7
Grossman [4] - 573:22, 574:4, 657:17, 657:19
ground [1] - 574:15
grounds [3] - 479:15,

479:20, 483:14
group [1] - 529:17
Group [216] - 299:21, 301:3, 329:20, 330:21, 331:15, 331:22, 332:6, 333:18, 339:15, 341:21, 341:25, 342:5, 345:11, 346:3, 346:6, 348:2, 348:5, 348:8, 349:11, 349:15, 349:18, 349:21, 350:22, 352:15, 353:6, 354:7, 355:15, 355:20, 356:2, 356:3, 356:25, 357:2, 357:4, 357:5, 357:25, 358:24, 362:7, 364:2, 364:11, 365:4, 365:13, 367:9, 367:13, 367:14, 368:5, 368:14, 368:20, 368:22, 369:4, 369:8, 369:15, 369:20, 371:5, 372:5, 372:8, 373:4, 373:21, 374:24, 375:5, 375:6, 376:3, 376:11, 377:4, 383:15, 387:3, 387:11, 389:9, 389:18, 390:16, 394:13, 395:10, 399:8, 399:11, 400:3, 400:9, 403:2, 403:19, 404:15, 405:17, 405:21, 406:5, 406:9, 406:20, 407:19, 407:21, 408:3, 412:19, 414:21, 415:16, 416:9, 416:23, 417:4, 424:12, 424:17, 424:19, 426:15, 426:17, 432:10, 441:5, 441:8, 441:11, 442:15, 444:4, 447:9, 447:16, 449:7, 449:17, 450:9, 461:6, 471:7, 472:6, 473:12, 473:18, 477:25, 480:6, 480:17, 481:5, 488:16, 488:18, 488:22, 489:2, 489:13, 489:18, 490:13, 491:2, 492:6, 492:12, 494:10, 494:14, 494:19, 495:3, 497:9, 497:14, 498:5, 498:9, 498:12, 498:20, 499:2, 500:5, 508:5, 508:9, 518:21, 518:24, 519:20, 519:23, 520:2, 520:5, 520:9, 520:11, 520:13, 521:6, 526:13, 532:13, 546:12, 548:10, 550:14, 551:25, 552:19, 553:8, 553:13, 554:11, 554:14, 554:17, 555:9, 558:16, 558:20, 560:22, 561:10, 570:5, 570:11, 571:25, 578:5, 578:25, 580:5, 580:18, 581:22, 582:9, 582:14, 582:19, 586:12, 586:17, 586:20, 587:13, 588:24, 589:15, 589:23, 592:3, 596:2, 596:21, 596:25, 597:9, 597:14, 598:19, 628:18, 629:7, 630:4, 663:3, 663:8, 663:21, 663:24, 664:11, 685:15, 686:9, 686:14, 686:16, 687:9, 688:5, 688:12, 688:16, 688:19, 689:4, 689:6, 689:9, 689:12, 689:14
GROUP [9] - 295:6, 295:10, 295:15, 295:20, 296:5, 296:9, 296:14, 298:4, 298:10
Group's [3] - 373:13, 552:23, 559:5
guarantee [2] - 387:7, 387:9
Guarantor [1] - 588:6
guess [1] - 358:4
guy [41] - 311:6, 311:7, 313:20, 314:18, 329:5, 360:16, 360:19, 361:11, 387:18, 387:23, 423:2, 423:17, 425:24, 431:8, 441:10, 444:25, 463:16, 465:22, 480:25, 482:8, 495:24, 512:9, 512:10, 536:17, 540:18, 541:6, 541:16, 544:24, 559:10, 566:7, 568:19, 598:8, 598:9, 603:8, 603:9, 623:6, 625:2, 627:25, 668:18, 674:16
guys [1] - 555:3

H

Hand [1] - 322:20
hand [7] - 389:23, 510:3, 511:11, 517:5, 558:9, 574:23, 690:20
Handing [1] - 529:21
handle [2] - 320:2, 431:11
handling [2] - 356:24, 662:19
hands [1] - 565:24
handwriting [16] - 510:17, 510:20, 510:25, 511:18, 514:20, 514:22, 516:10, 516:11, 517:12, 518:13, 518:15, 518:16, 520:23, 620:3, 642:21
handwritten [8] - 388:10, 388:18, 389:6, 473:24, 475:11, 476:22, 624:21, 640:20
hang [1] - 444:24
hanging [1] - 553:14
happy [2] - 549:9, 670:22
hard [3] - 449:13, 644:25, 645:18
hardly [1] - 565:13
harmless [4] - 527:2, 527:16, 528:9, 528:22
head [3] - 300:3, 574:24, 618:6
headache [1] - 590:12
heading [6] - 331:21, 408:13, 557:23, 685:15, 686:5, 686:19
hear [13] - 306:2, 340:14, 340:20, 341:7, 341:8, 377:11, 551:6, 605:4, 617:20, 617:21, 619:2, 658:10, 674:18
heard [9] - 324:18, 341:7, 341:9, 379:5, 464:23, 536:13, 550:11, 550:13, 667:4
hearing [2] - 448:4, 462:22
held [21] - 296:16, 358:12, 403:16, 408:18, 442:9, 457:2, 464:5, 474:15, 475:11, 513:14, 513:17, 515:6, 549:19, 573:23, 583:16, 583:23, 593:16, 618:24, 623:23, 649:16, 665:4
help [14] - 556:20, 565:10, 565:22, 568:8, 598:10, 613:25, 615:15, 671:11, 674:15, 674:17, 675:18, 675:19, 675:21, 675:24
Help [1] - 674:20
helping [1] - 672:23
helpless [1] - 567:4
hereby [3] - 514:17, 684:8, 690:9
herein [3] - 688:14, 689:12, 689:18
hereinbefore [1] - 690:11
hereunto [1] - 690:19
herself [5] - 612:15, 613:3, 617:23, 621:4, 621:7
high [2] - 378:23, 655:13
higher [3] - 414:8, 415:17, 415:18
Hillside [69] - 302:10, 303:4, 303:10, 303:14, 303:15, 303:19, 303:20, 303:23, 303:24, 307:8, 307:9, 307:17, 308:3, 308:15, 309:19, 309:20, 310:6, 310:17, 310:20, 310:22, 310:23, 311:8, 311:18, 312:4, 313:2, 313:11, 313:21, 314:21, 315:6, 315:7, 315:9, 315:14, 315:16, 318:19, 318:23, 319:2, 319:5, 319:9, 319:12, 320:14, 320:19, 320:21, 320:25, 323:4, 323:9, 323:16, 323:21, 323:24, 323:25, 324:3, 324:8, 324:11, 325:19, 328:10, 328:12, 445:16, 445:23, 446:23, 446:25, 488:10, 492:23, 492:25, 499:21, 499:24, 509:2, 509:4, 570:8, 570:10, 594:7
himself [6] - 395:19, 400:16, 460:19, 463:16, 513:5
hire [7] - 313:21, 314:21, 319:8, 369:23, 369:25, 461:21, 463:3
hired [19] - 315:8, 319:11, 319:16, 341:10, 341:15, 347:4, 361:15, 369:19, 380:12, 380:13, 460:2, 460:4, 460:13, 461:17, 461:25, 462:6, 462:10, 462:23, 463:9
hiring [2] - 455:7, 461:4
History [2] - 408:15, 686:6
history [1] - 681:22
Hmm [1] - 484:18
hmm [43] - 306:9, 308:18, 308:22, 309:7, 316:13, 317:5, 330:5, 340:6, 348:13, 364:15, 372:19, 377:2, 417:20, 490:24, 491:5, 498:10, 503:16, 503:19,

504:4, 509:16, 510:4, 510:14, 510:25, 514:3, 514:6, 516:7, 517:11, 520:18, 521:4, 521:18, 523:4, 523:12, 526:5, 528:3, 528:11, 529:3, 543:21, 581:10, 597:12, 601:18, 620:13, 624:19, 643:23
hold [7] - 336:22, 466:7, 493:6, 526:25, 528:8, 528:21, 546:22
Hold [4] - 434:12, 478:25, 503:24, 612:5
holding [2] - 448:16, 527:16
holds [1] - 621:25
Honda [7] - 353:14, 378:24, 381:12, 381:24, 384:23, 385:2, 685:22
honest [1] - 463:23
honestly [1] - 301:14
hoped [3] - 460:2, 460:14, 460:21
hour [1] - 354:3
hours [1] - 682:7
house [1] - 377:22
HSBC [2] - 372:21, 372:25
hug [1] - 442:24
Human [1] - 311:10
hundred [5] - 310:11, 352:7, 403:12, 425:12, 490:17
hundreds [2] - 616:5, 616:9
Huntington [2] - 488:19, 495:2

I

Ibrahim [1] - 319:15
idea [15] - 328:14, 328:15, 506:8, 511:24, 539:12, 553:17, 557:18, 557:19, 559:20, 561:2, 616:19, 660:8, 660:10, 661:4, 669:8
identical [5] - 333:11, 333:13, 333:15, 333:16, 398:15
identification [34] - 304:11, 316:4, 331:25, 358:9, 362:18, 381:19, 390:12, 398:2, 408:17, 418:2, 472:24, 474:14, 502:24, 519:18, 545:25, 546:5, 558:2, 558:7, 583:10, 583:14, 583:21, 584:2, 591:25, 592:6, 592:10, 620:21, 634:2, 636:9, 641:4, 641:8, 641:19, 651:20, 651:25, 653:25
identified [10] - 308:24, 336:2, 336:3, 385:13, 405:23, 520:9, 653:20, 657:21, 688:14, 689:10
identifies [4] - 324:3, 324:7, 324:11, 518:21
identifying [1] - 334:23
identities [3] - 489:19, 489:20, 572:4
identity [3] - 356:6, 356:7, 489:3
ignore [1] - 536:20
implying [1] - 639:23
important [4] - 487:17, 594:22, 594:25, 675:11
imposes [2] - 371:8, 371:16
impress [1] - 324:23
improper [3] - 304:22, 538:12, 538:22
IN [1] - 690:19
INC [3] - 296:17, 296:23, 297:13
Inc [7] - 488:9, 488:22, 489:2, 489:13, 490:13, 491:2, 594:7
include [2] - 383:16, 405:25
included [2] - 363:10, 363:12
includes [1] - 526:9
including [11] - 302:16, 375:24, 522:18, 526:18, 527:3, 584:3, 584:4, 625:11, 636:12, 688:10, 688:23
Including [1] - 570:5
income [2] - 453:21, 453:23
incoming [2] - 449:20, 449:21
inconsistencies [3] - 439:12, 439:15, 439:16
Incorrect [1] - 668:10
incorrect [4] - 451:18, 588:14, 668:5, 668:9
incorrectly [2] - 497:13, 534:14
increase [2] - 391:11, 391:25
incurred [2] - 527:21, 529:10
indemnification [2] - 545:15, 548:20
indemnify [3] - 526:24, 528:8, 528:21
indemnifying [1] - 527:15
Indemnity [1] - 526:22
indemnity [2] - 526:23, 528:5
independent [6] - 314:13, 576:11, 576:12, 576:16, 616:20, 618:6
INDEX [1] - 685:25
indicated [12] - 337:13, 363:15, 369:14, 370:15, 372:4, 372:7, 417:14, 543:22, 557:7, 571:23, 571:24, 682:23
indicates [3] - 333:21, 387:6, 524:17
Indicating [3] - 510:7, 546:21, 585:24
individual [1] - 347:20
indulge [1] - 487:16
industry [1] - 314:10
inflated [1] - 330:12
inform [2] - 468:25, 554:23
Information [1] - 642:16
INFORMATION [2] - 688:2, 689:2
information [51] - 333:14, 343:2, 343:16, 343:22, 344:4, 344:11, 344:18, 345:19, 346:7, 346:16, 347:10, 347:22, 348:23, 349:5, 349:7, 350:20, 368:25, 376:14, 388:9, 388:17, 389:5, 448:24, 450:7, 476:20, 476:22, 477:2, 477:6, 477:7, 477:18, 478:2, 524:8, 543:2, 543:13, 543:16, 552:15, 588:8, 588:13, 618:19, 624:15, 624:23, 631:10, 631:23, 631:25, 633:7, 688:4, 688:6, 688:7, 688:10, 688:13, 688:15, 689:13
informed [1] - 632:7
initial [2] - 411:17, 559:10
input [1] - 646:8
inquire [1] - 595:20
inquiring [1] - 411:9
inquiry [5] - 456:2, 604:21, 606:5, 635:22, 666:6
INSERT [16] - 343:19, 343:20, 344:14, 344:15, 344:20, 344:21, 349:8, 349:9, 350:24, 350:25, 375:19, 376:12, 442:4, 450:11, 450:12, 468:14
Insert [10] - 688:4, 688:6, 688:7, 688:13, 688:15, 688:22, 689:4, 689:11, 689:13, 689:17
Inside [1] - 495:19
inside [4] - 335:11, 433:25, 441:7, 484:10
Insofar [1] - 483:20
installment [43] - 306:7, 306:11, 307:7, 359:3, 359:8, 359:14, 359:17, 359:25, 362:22, 362:24, 363:6, 403:23, 422:2, 423:6, 423:8, 500:12, 542:17, 542:18, 543:17, 550:15, 551:5, 552:12, 560:18, 560:21, 562:9, 562:16, 591:10, 606:19, 638:15, 638:24, 639:9, 639:11, 640:15, 652:3, 652:22, 667:12, 667:25, 669:24, 670:19, 671:3, 671:6, 671:7, 685:18
Installment [7] - 560:16, 651:17, 651:22, 654:10, 671:5, 687:19, 687:21
instance [1] - 507:25
instances [3] - 431:16, 506:24, 525:8
instead [4] - 355:24, 398:8, 485:18, 591:12
Instead [1] - 419:7
institutions [2] - 630:7, 630:9
insulting [4] - 481:25, 482:3, 482:15, 482:25
Insurance [1] - 405:25
insurance [1] - 522:19
intelligence [2] - 482:4, 482:15
intended [4] - 337:16, 389:18, 416:24, 486:4
interest [13] - 333:22, 391:11, 391:22, 415:6, 445:9, 449:3, 489:14, 490:25, 491:13, 491:18, 637:14, 637:15, 637:19
interested [4] - 499:8, 541:4, 598:23, 690:18
Internally [1] - 513:20
internally [1] - 515:7
internet [3] - 382:25, 558:14, 656:20
interpret [2] - 574:12, 668:16
interpreter [1] - 486:12
interrupt [2] - 332:14,

647:20
interrupting [3] - 321:6, 321:14, 321:20
interview [6] - 543:5, 543:23, 544:13, 544:19, 545:8, 563:4
interviews [1] - 544:21
introduce [2] - 464:14, 621:7
introduced [2] - 575:19, 575:25
investigation [2] - 550:25, 568:4
involve [2] - 529:23, 680:2
involved [23] - 299:23, 330:21, 540:12, 540:15, 541:18, 541:21, 542:2, 543:12, 580:4, 580:5, 580:8, 580:13, 580:17, 580:18, 580:21, 580:23, 606:6, 622:8, 622:13, 624:7, 633:16, 645:25, 652:14
involvement [2] - 494:6, 641:15
iota [1] - 321:23
irrelevant [8] - 357:19, 360:13, 360:15, 360:17, 360:21, 361:19, 361:20, 361:21
Irrelevant [2] - 360:16, 360:22
IRS [2] - 345:20, 688:11
Isaac [1] - 493:19
Islamic [1] - 613:24
Island [3] - 468:19, 489:4, 648:22
issue [6] - 350:8, 351:9, 354:5, 356:11, 479:16, 656:11
issues [2] - 600:24, 607:6
item [7] - 521:10, 525:25, 602:4, 603:11, 603:12, 604:10, 615:11
itemed [1] - 603:5
itemize [3] - 329:11, 330:9, 330:10
itemized [1] - 329:10
itemizes [1] - 329:25
items [1] - 603:7
itself [2] - 477:5, 591:11

J

jail [4] - 463:15, 463:19, 464:2, 567:2
Jake [1] - 356:23
Jamaica [2] - 488:10, 594:8
January [2] - 552:20, 553:4
Jericho [2] - 488:19, 494:25
Jersey [5] - 378:15, 418:13, 418:15, 418:21
Jim [7] - 468:22, 576:2, 590:10, 598:5, 646:14, 646:18, 648:14
job [7] - 474:6, 474:7, 476:15, 495:8, 495:9, 544:22, 579:5
John [9] - 642:13, 642:17, 657:25, 658:4, 658:6, 658:9, 658:12, 658:15, 658:23
Juan [1] - 484:3
judge [1] - 380:16
Judge [3] - 322:10, 325:7, 682:11
Julie [1] - 577:10
Julio [92] - 299:23, 340:7, 340:11, 341:3, 341:11, 344:3, 352:9, 352:20, 356:23, 357:8, 357:21, 359:22, 359:23, 360:25, 361:16, 363:15, 417:12, 419:24, 419:25, 421:7, 425:14, 426:4, 429:6, 430:13, 430:16, 430:20, 431:11, 431:12, 431:17, 431:19, 432:21, 433:2, 433:19, 434:3, 435:25, 436:4, 436:8, 436:15, 436:24, 437:10, 440:5, 440:17, 442:15, 443:3, 443:9, 443:13, 443:14, 444:7, 444:13, 445:5, 445:12, 446:19, 447:3, 447:7, 447:12, 447:14, 448:8, 459:5, 461:4, 461:17, 461:21, 461:25, 462:6, 462:23, 463:3, 463:10, 464:24, 465:19, 467:7, 469:19, 469:24, 470:11, 470:19, 470:25, 471:7, 484:2, 531:3, 551:23, 551:24, 555:2, 555:8, 555:14, 555:16, 556:7, 559:21, 562:15, 567:2, 604:25, 624:8, 658:14, 664:3, 664:4
Julio's [2] - 444:7, 559:17
July [4] - 311:17, 446:8, 557:24, 569:8
jumping [1] - 448:18
June [7] - 316:9, 471:20, 471:25, 546:3, 569:8, 569:12, 686:23
jurors [1] - 324:24

K

Keep [2] - 305:25, 377:10
keep [20] - 379:15, 401:23, 413:14, 427:8, 438:18, 440:11, 442:5, 463:23, 533:25, 562:12, 562:18, 563:3, 563:6, 588:9, 590:18, 614:22, 615:3, 670:21, 681:20
kept [1] - 554:14
KESHAVARZ [1] - 297:9
Keshavarz [9] - 328:17, 329:7, 329:18, 330:15, 336:25, 351:24, 354:11, 417:11, 448:12
Kevin [9] - 342:4, 342:6, 342:9, 342:11, 342:17, 342:19, 343:3, 343:16, 688:5
Kevin's [1] - 342:23
kidding [2] - 302:17, 481:19
kids [5] - 377:17, 377:22, 460:20, 463:17, 463:18
kind [6] - 300:22, 421:6, 454:16, 568:10, 653:6
King [1] - 577:10
Kings [1] - 298:11
knowing [1] - 463:4
knowledge [14] - 331:10, 331:11, 361:22, 459:17, 633:4, 635:3, 641:14, 649:23, 651:2, 651:6, 651:10, 668:14, 668:18
known [3] - 346:24, 478:18, 638:4
knows [12] - 440:19, 440:23, 447:17, 447:18, 447:19, 447:21, 460:7, 524:21, 634:24, 638:5, 638:6, 679:13
Korean [1] - 566:7

L

label [1] - 331:18
labeled [6] - 583:19, 583:20, 593:11, 593:19, 625:20, 653:24
lady [4] - 468:18, 561:3, 563:4, 565:6
Lakebridge [1] - 298:11
LANCE [2] - 297:18, 297:22
Lance [2] - 574:4, 677:13
landlord [4] - 449:25, 450:2, 450:7, 689:14
Lane [3] - 549:24, 616:15, 657:13
LANE [144] - 297:6, 299:10, 301:24, 302:17, 302:22, 302:24, 304:2, 304:6, 304:17, 304:22, 305:3, 308:8, 315:22, 316:6, 321:5, 321:9, 321:14, 321:24, 322:7, 322:14, 323:2, 324:19, 324:25, 325:5, 325:17, 331:16, 332:17, 335:18, 335:21, 335:25, 343:11, 344:9, 344:16, 345:9, 345:16, 346:13, 346:17, 347:2, 347:24, 349:3, 350:18, 351:2, 351:6, 358:6, 358:16, 358:21, 362:13, 362:19, 363:12, 368:3, 369:10, 369:13, 370:8, 370:22, 370:25, 371:4, 371:11, 371:18, 372:2, 372:6, 375:16, 375:20, 376:9, 376:13, 378:5, 381:16, 388:16, 390:8, 394:25, 397:20, 398:5, 398:9, 398:18, 399:10, 400:15, 403:14, 405:14, 406:8, 406:16, 406:23, 407:3, 407:6, 407:10, 407:14, 408:12, 408:21, 409:7, 409:17, 409:24, 410:7, 410:11, 417:6, 417:21, 424:6, 424:10, 424:15, 425:5, 425:7, 430:5, 434:14, 434:17, 438:22, 439:9, 439:18, 441:20, 442:5, 442:8, 450:5, 450:15, 450:20, 451:22, 452:8, 453:22, 454:25, 455:7, 455:14, 455:21, 455:25, 456:4, 456:7, 457:13, 462:7, 462:17, 464:3, 464:8, 479:14,

479:21, 486:24, 539:3, 549:18, 549:23, 557:21, 558:4, 571:2, 571:18, 573:17, 573:20, 616:11, 623:20, 649:15, 657:15, 665:2, 685:5, 688:4
language [2] - 567:14, 615:19
large [2] - 365:22, 367:8
last [13] - 306:10, 343:25, 346:24, 409:22, 434:18, 499:13, 500:14, 566:6, 566:19, 585:7, 586:9, 586:23, 626:16
Last [3] - 344:2, 353:13, 485:13
last-known [1] - 346:24
late [3] - 469:17, 660:13, 662:8
laughing [1] - 613:20
laughter [1] - 452:9
law [15] - 296:16, 454:22, 455:3, 455:9, 455:13, 455:15, 523:7, 546:18, 547:6, 548:16, 621:12, 621:14, 622:17, 637:23, 679:10
LAW [4] - 297:9, 297:18, 298:3, 298:9
laws [1] - 522:23
lawsuit [24] - 379:10, 437:9, 465:9, 465:11, 466:4, 466:8, 466:13, 467:10, 467:13, 536:20, 547:20, 547:21, 551:8, 551:9, 565:4, 567:21, 567:24, 568:3, 568:23, 568:25, 569:2, 616:25, 617:9, 647:2
lawsuits [9] - 501:17, 501:19, 501:21, 501:23, 574:6, 636:18, 646:17, 650:12, 650:19
lawyer [19] - 318:14, 326:19, 326:20, 327:8, 379:19, 380:20, 464:12, 493:19, 494:4, 494:5, 494:6, 505:24, 571:20, 600:4, 600:7, 610:4, 610:6, 676:13, 681:25
lawyer's [1] - 494:5
lawyers [1] - 599:20
leading [2] - 462:3, 622:2
learn [1] - 432:25
learned [1] - 467:6
learning [1] - 402:23
least [3] - 380:20, 437:9, 448:15
leave [15] - 322:16, 343:11, 344:9, 349:3, 350:18, 351:14, 351:17, 352:3, 375:16, 376:9, 390:5, 441:20, 450:5, 468:12, 615:21
leaves [1] - 682:18
leaving [5] - 428:18, 680:19, 681:21, 681:25, 683:2
LeClair [6] - 298:14, 545:22, 546:2, 547:6, 686:21, 686:23
left [20] - 304:3, 353:22, 449:13, 449:19, 449:22, 551:24, 552:21, 555:8, 555:10, 555:14, 598:13, 629:11, 649:20, 650:2, 652:24, 664:4, 664:7, 675:16, 682:7, 682:13
legal [12] - 391:13, 393:23, 404:22, 523:15, 537:6, 565:16, 565:24, 592:15, 593:4, 593:7, 605:21, 637:22
LEGAL [2] - 296:17, 297:13
legally [4] - 391:8, 391:24, 483:18, 523:20
lender [37] - 355:21, 382:15, 386:14, 387:2, 387:22, 389:8, 467:20, 468:17, 468:20, 471:14, 478:16, 479:5, 480:6, 480:11, 507:10, 508:2, 508:8, 508:19, 508:24, 509:10, 522:10, 525:9, 526:11, 540:11, 540:14, 540:22, 541:13, 541:17, 541:18, 541:21, 541:25, 542:7, 542:15, 543:3, 543:12, 543:15, 628:17
lender's [1] - 389:14
lenders [10] - 327:25, 328:2, 328:9, 403:3, 403:4, 478:10, 628:7, 628:8, 628:15, 657:9
lending [6] - 362:7, 366:24, 368:17, 414:12, 507:3, 507:5
less [7] - 416:11, 416:18, 500:7, 552:24, 672:16, 672:19, 682:7
letter [21] - 545:22, 547:8, 547:9, 547:17, 547:23, 548:21, 585:2, 597:18, 598:3, 598:17, 598:24, 599:5, 599:13, 599:14, 599:16, 599:19, 599:23, 600:2, 600:8, 609:25, 686:21
Letter [2] - 546:2, 686:23
letterhead [25] - 390:10, 397:24, 474:11, 502:21, 545:22, 546:2, 591:21, 592:2, 592:7, 620:18, 633:23, 640:25, 641:12, 685:23, 686:4, 686:9, 686:11, 686:21, 686:23, 687:6, 687:8, 687:10, 687:12, 687:14, 687:16
letters [10] - 545:17, 545:18, 546:17, 547:5, 548:13, 548:15, 549:2, 549:9, 650:23, 650:25
Lexington [1] - 296:23
liabilities [1] - 527:3
Liability [2] - 525:2, 525:4
liability [1] - 525:6
liable [1] - 592:14
liaison [1] - 648:14
liar [1] - 664:25
license [11] - 459:18, 459:20, 542:16, 553:2, 553:4, 608:3, 640:18, 644:13, 644:17, 644:21, 666:21
licenses [1] - 495:5
lied [6] - 470:19, 470:25, 471:8, 471:12, 678:15, 680:7
lien [7] - 310:15, 310:18, 508:14, 634:9, 641:21, 641:24, 642:8
Lien [3] - 640:25, 642:16, 687:16
lienholder [2] - 309:17, 309:21
lies [2] - 681:4, 681:7
life [5] - 392:3, 392:18, 392:21, 572:24, 615:14
limit [3] - 370:11, 371:24, 406:17
limited [2] - 322:15, 508:18
limiting [2] - 406:7, 406:11
Lindermayer [3] - 464:9, 464:10, 464:19
LINDERMAYER [68] - 297:16, 439:11, 464:11, 464:14, 464:17, 466:20, 467:3, 468:12, 469:8, 471:22, 472:21, 474:9, 479:2, 479:6, 479:19, 483:6, 483:13, 483:17, 483:21, 486:11, 486:16, 486:20, 603:23, 604:3, 604:18, 608:25, 609:9, 610:16, 611:8, 611:11, 611:16, 611:25, 612:16, 613:4, 613:8, 621:17, 626:5, 626:10, 627:8, 627:12, 627:21, 632:22, 649:22, 650:4, 653:16, 655:21, 656:7, 665:7, 665:23, 666:7, 667:9, 667:21, 673:17, 673:25, 675:3, 675:15, 676:4, 676:18, 678:9, 679:12, 680:15, 680:21, 682:2, 682:5, 682:17, 682:21, 685:6, 689:16
line [12] - 325:6, 325:12, 326:22, 379:2, 561:12, 585:15, 601:6, 603:5, 603:7, 604:10, 604:12, 615:11
line-item [2] - 604:10, 615:11
line-itemed [1] - 603:5
lines [1] - 334:13
list [6] - 401:25, 473:11, 474:6, 521:25, 522:7, 525:4
listed [34] - 307:6, 308:14, 308:17, 308:20, 309:3, 309:6, 309:8, 309:13, 309:16, 317:2, 318:4, 319:2, 354:8, 360:4, 361:4, 361:17, 364:10, 382:23, 385:17, 388:20, 389:13, 412:11, 412:24, 417:19, 419:14, 421:8, 422:10, 422:14, 428:16, 476:9, 476:16, 560:20, 561:5, 562:3
Listen [9] - 380:17, 388:23, 433:6, 531:6, 613:25, 647:18, 650:7, 654:2
listen [10] - 365:10, 432:5, 433:9, 434:10, 445:18, 465:20, 646:22,

647:23, 664:20
listens [1] - 322:19
listing [1] - 310:7
lists [4] - 355:14, 355:17, 366:21, 474:4
litigation [1] - 527:4
live [1] - 312:2
living [1] - 377:5
LLC [16] - 295:6, 295:10, 295:15, 295:20, 296:5, 296:9, 296:14, 298:4, 298:10, 302:10, 309:20, 318:23, 319:2, 319:5, 579:11, 597:9
LLP [1] - 297:3
loan [65] - 336:12, 356:16, 382:6, 391:6, 391:7, 391:8, 391:16, 391:19, 391:25, 392:3, 392:16, 392:18, 392:20, 392:22, 394:5, 394:8, 430:18, 447:3, 448:16, 448:21, 448:25, 467:20, 467:25, 468:17, 468:22, 469:11, 471:16, 471:17, 471:19, 472:15, 530:25, 557:8, 560:10, 564:21, 589:24, 591:7, 591:9, 591:13, 605:4, 606:4, 609:23, 655:10, 656:19, 656:23, 659:10, 659:11, 659:13, 659:22, 660:24, 662:12, 670:21, 672:16, 672:24, 673:2, 673:10, 673:12, 673:24, 674:21, 676:8, 680:8, 681:8, 681:11, 681:14, 689:18
Loan [2] - 448:23, 448:24
loans [6] - 394:14, 471:10, 635:25, 648:19, 656:12, 657:4
local [1] - 522:23
locate [1] - 346:9
located [1] - 566:15
location [6] - 449:6, 449:17, 495:20, 495:24, 624:8, 624:9
locations [1] - 552:23
logo [1] - 652:24
longtime [1] - 311:22
look [64] - 304:15, 305:4, 305:10, 316:6, 332:2, 359:16, 363:17, 363:19, 363:21, 364:20, 366:9, 381:21, 409:19, 410:3, 411:20, 418:5, 419:9, 422:6, 424:25, 473:15, 476:5, 477:16, 503:3, 509:13, 510:5, 513:24, 516:16, 520:16, 521:8, 521:10, 522:16, 523:9, 524:11, 524:15, 524:25, 525:25, 526:21, 546:15, 547:17, 554:16, 558:13, 559:2, 560:15, 561:24, 568:14, 584:5, 593:13, 594:5, 594:6, 594:20, 594:22, 595:22, 597:24, 613:19, 615:13, 616:17, 616:21, 617:3, 625:9, 625:12, 626:25, 641:20, 643:11, 654:13
Look [7] - 305:12, 308:5, 336:21, 390:14, 399:2, 423:21, 509:15
looked [14] - 329:17, 354:5, 357:20, 358:3, 358:4, 421:7, 423:10, 476:6, 505:15, 505:23, 546:23, 578:10, 584:19
Looking [10] - 460:25, 504:5, 521:19, 587:22, 603:18, 626:13, 626:16, 636:12, 652:18, 653:8
looking [24] - 304:25, 316:7, 317:2, 345:23, 410:4, 410:15, 410:22, 461:16, 463:8, 472:12, 476:7, 477:20, 509:25, 510:2, 510:5, 511:7, 522:7, 523:3, 585:2, 593:15, 598:2, 600:21, 618:11, 632:21
looks [5] - 385:21, 385:22, 420:23, 558:22, 622:5
Looks [1] - 385:24
lose [2] - 355:24, 394:3
loss [7] - 410:19, 661:11, 661:13, 661:19, 661:23, 661:24, 661:25
Loss [1] - 305:22
losses [3] - 526:7, 526:18, 527:2
lost [5] - 379:21, 396:14, 508:13, 553:3, 678:16
loud [1] - 621:6
love [1] - 454:25
low [1] - 485:23
Lower [1] - 445:10
lower [8] - 414:5, 414:7, 445:9, 449:2, 656:25, 670:6, 670:8, 670:13
Luke [1] - 322:20
lying [3] - 470:2, 470:11, 471:3
Lying [3] - 471:4, 484:7, 681:6

M

M&T [124] - 297:20, 328:5, 403:20, 403:24, 404:2, 404:7, 468:5, 468:21, 468:25, 469:10, 500:21, 500:24, 501:11, 501:14, 501:25, 574:5, 575:18, 575:20, 576:3, 576:9, 580:5, 580:8, 580:12, 580:18, 580:25, 581:23, 582:6, 582:22, 582:25, 584:13, 586:16, 587:14, 587:19, 588:17, 589:3, 589:8, 589:9, 589:22, 591:21, 592:2, 592:7, 593:4, 595:14, 599:9, 600:13, 602:14, 603:14, 605:11, 605:19, 606:7, 614:5, 616:4, 618:12, 622:2, 622:4, 622:8, 622:13, 624:21, 628:9, 628:25, 630:11, 631:4, 631:5, 631:13, 632:5, 632:7, 633:16, 634:9, 635:6, 638:4, 638:5, 638:6, 638:24, 640:3, 641:15, 642:8, 645:24, 646:8, 646:13, 646:25, 647:13, 647:25, 648:19, 648:20, 649:4, 649:7, 650:11, 651:3, 651:7, 651:11, 652:14, 652:16, 653:2, 653:3, 653:6, 656:11, 657:2, 657:4, 657:8, 659:3, 659:4, 659:9, 659:12, 659:16, 659:24, 660:4, 660:8, 660:11, 660:15, 661:15, 670:3, 672:3, 672:8, 672:17, 673:10, 673:12, 677:13, 687:6, 687:8, 687:10, 689:19
M&T's [1] - 592:15
M-A-S-A-U-D [1] - 491:9
machine [3] - 438:4, 438:12, 438:14
Magdy [2] - 579:14, 579:20
magistrate [2] - 682:4, 682:6
Magistrate [1] - 436:16
mail [17] - 577:6, 577:13, 577:22, 578:2, 578:6, 578:9, 594:17, 594:21, 594:22, 595:6, 596:8, 596:19, 596:21, 597:17, 628:20, 630:25
mails [1] - 563:17
maintained [3] - 441:14, 441:22, 689:11
male [1] - 610:8
Mamdoh [386] - 300:1, 301:1, 302:1, 303:1, 304:1, 305:1, 306:1, 307:1, 308:1, 309:1, 310:1, 311:1, 312:1, 313:1, 314:1, 315:1, 316:1, 317:1, 318:1, 319:1, 320:1, 321:1, 322:1, 323:1, 324:1, 325:1, 326:1, 327:1, 328:1, 329:1, 330:1, 331:1, 332:1, 333:1, 334:1, 335:1, 336:1, 337:1, 338:1, 339:1, 340:1, 341:1, 342:1, 343:1, 344:1, 345:1, 346:1, 347:1, 348:1, 349:1, 350:1, 351:1, 352:1, 353:1, 354:1, 355:1, 356:1, 357:1, 358:1, 359:1, 360:1, 361:1, 362:1, 363:1, 364:1, 365:1, 366:1, 367:1, 368:1, 369:1, 370:1, 371:1, 372:1, 373:1, 374:1, 375:1, 376:1, 377:1, 378:1, 379:1, 380:1, 381:1, 382:1, 383:1, 384:1, 385:1, 386:1, 387:1, 388:1, 389:1, 390:1, 391:1, 392:1, 393:1, 394:1, 395:1, 396:1, 397:1, 398:1, 399:1, 400:1, 401:1, 402:1, 403:1, 404:1, 405:1, 406:1, 407:1, 408:1, 409:1, 410:1, 411:1, 412:1, 413:1, 414:1, 415:1, 416:1, 417:1, 418:1, 419:1, 420:1, 421:1, 422:1, 423:1, 424:1, 425:1, 426:1, 427:1, 428:1, 429:1, 430:1, 431:1, 432:1, 433:1, 434:1, 435:1, 436:1, 437:1, 438:1, 439:1, 440:1, 441:1, 442:1, 443:1, 444:1, 445:1, 446:1, 447:1, 448:1, 449:1, 450:1, 451:1, 452:1, 453:1, 454:1, 455:1, 456:1, 457:1, 458:1, 459:1, 460:1, 461:1, 462:1, 463:1, 464:1, 465:1, 466:1, 467:1, 468:1, 469:1, 470:1, 471:1,

472:1, 473:1, 474:1, 475:1, 476:1, 477:1, 478:1, 479:1, 480:1, 481:1, 482:1, 483:1, 484:1, 485:1, 486:1, 487:1, 488:1, 489:1, 490:1, 490:14, 491:1, 492:1, 493:1, 494:1, 495:1, 496:1, 497:1, 498:1, 499:1, 500:1, 501:1, 502:1, 503:1, 504:1, 505:1, 506:1, 507:1, 508:1, 509:1, 510:1, 511:1, 512:1, 513:1, 514:1, 514:14, 515:1, 516:1, 517:1, 518:1, 519:1, 520:1, 521:1, 522:1, 523:1, 524:1, 525:1, 526:1, 527:1, 528:1, 529:1, 530:1, 531:1, 532:1, 533:1, 534:1, 535:1, 536:1, 537:1, 538:1, 539:1, 540:1, 541:1, 542:1, 543:1, 544:1, 545:1, 546:1, 547:1, 548:1, 549:1, 550:1, 551:1, 552:1, 553:1, 554:1, 555:1, 556:1, 557:1, 558:1, 559:1, 560:1, 561:1, 562:1, 563:1, 564:1, 565:1, 566:1, 567:1, 568:1, 569:1, 570:1, 571:1, 572:1, 573:1, 574:1, 575:1, 576:1, 577:1, 578:1, 579:1, 580:1, 581:1, 582:1, 583:1, 584:1, 585:1, 586:1, 587:1, 588:1, 589:1, 590:1, 591:1, 592:1, 593:1, 594:1, 595:1, 596:1, 597:1, 598:1, 599:1, 600:1, 601:1, 602:1, 603:1, 604:1, 605:1, 606:1, 607:1, 608:1, 609:1, 610:1, 611:1, 612:1, 613:1, 614:1, 615:1, 616:1, 617:1, 618:1, 619:1, 620:1, 621:1, 622:1, 623:1, 624:1, 625:1, 626:1, 627:1, 628:1, 629:1, 630:1, 631:1, 632:1, 633:1, 634:1, 635:1, 636:1, 637:1, 638:1, 639:1, 640:1, 641:1, 642:1, 643:1, 644:1, 645:1, 646:1, 647:1, 648:1, 649:1, 650:1, 651:1, 652:1, 653:1, 654:1, 655:1, 656:1, 657:1, 658:1, 659:1, 660:1, 661:1, 662:1, 663:1, 664:1, 665:1, 666:1, 667:1, 668:1, 669:1, 670:1, 671:1, 672:1, 673:1, 674:1, 675:1, 676:1, 677:1, 678:1, 679:1, 680:1, 681:1, 682:1, 683:1

MAMDOH [9] - 295:23, 296:15, 298:4, 298:10, 684:8, 684:16, 685:3, 690:10

man [2] - 607:17, 607:19

Manager [2] - 492:2, 495:12

manager [24] - 303:18, 312:16, 312:17, 312:25, 313:5, 334:17, 341:18, 384:10, 384:12, 395:23, 403:9, 460:5, 478:15, 492:5, 495:11, 578:19, 578:20, 578:21, 619:13, 663:9, 664:6, 664:11, 688:8

Manhattan [2] - 310:7, 573:3

Manheim [5] - 411:23, 412:4, 412:8, 412:9, 416:7

Manheim.com [3] - 408:14, 411:21, 686:6

manner [2] - 347:7, 538:22

manual [1] - 628:5

manufacturer [1] - 438:17

MANUFACTURERS [1] - 297:19

Manville [1] - 297:5

March [3] - 545:23, 585:12, 686:22

Mariani [1] - 595:13

mark [11] - 358:6, 381:16, 397:22, 408:12, 502:19, 545:20, 558:4, 631:3, 631:6, 640:23, 651:14

marked [58] - 304:3, 304:10, 315:23, 316:3, 331:19, 331:23, 332:3, 355:2, 358:8, 362:14, 362:16, 381:18, 390:8, 390:11, 397:24, 408:15, 415:20, 417:22, 417:24, 472:22, 472:23, 474:10, 474:13, 474:18, 476:13, 476:23, 502:22, 503:2, 545:23, 546:4, 546:9, 547:10, 557:22, 557:25, 558:6, 558:10, 583:7, 583:9, 583:13, 591:23, 592:4, 592:8, 620:17, 620:20, 625:9, 633:22, 633:25, 636:9, 641:2, 641:6, 641:18, 643:3, 643:4, 643:9, 651:18, 651:23, 652:4, 652:19

market [8] - 378:17, 378:23, 391:5, 391:7, 391:8, 498:3, 638:8, 646:5

marketing [1] - 541:22

marriage [1] - 690:17

Masaud [2] - 491:9, 579:14

master [1] - 407:13

matches [1] - 517:4

material [1] - 589:8

matter [7] - 361:12, 369:16, 599:6, 679:10, 679:12, 690:18

mattered [1] - 601:7

mean [32] - 300:9, 302:23, 322:25, 345:15, 348:4, 364:5, 384:6, 392:15, 419:17, 437:18, 438:24, 471:21, 479:17, 485:16, 501:20, 523:22, 524:3, 531:17, 535:23, 572:16, 574:13, 590:2, 596:5, 601:21, 627:5, 644:6, 650:17, 650:22, 674:9, 674:19, 678:2, 679:25

Meaning [2] - 391:10, 437:19

means [7] - 301:9, 379:2, 386:9, 410:9, 519:6, 590:13, 590:14

meantime [2] - 536:16, 567:3

MEDEA [3] - 296:19, 690:7, 690:22

media [2] - 611:5, 611:6

medication [2] - 301:18, 302:4

meet [7] - 332:22, 380:14, 531:2, 531:13, 566:8, 616:22, 617:4

Meet [2] - 380:16, 625:2

meeting [2] - 436:10, 515:12

Melville [1] - 299:6

Member [1] - 579:9

member [1] - 579:10

memorize [1] - 522:6

memory [5] - 521:20, 522:8, 523:5, 568:8, 569:15

men's [1] - 378:4

mentioned [3] - 304:20, 611:2, 648:18

mentioning [1] - 419:11

mess [1] - 419:8

met [2] - 334:4, 487:10

metal [1] - 598:15

metaphysical [1] - 677:11

MFY [2] - 296:17, 297:13

middle [5] - 513:24, 514:2, 516:5, 642:16, 682:8

might [4] - 487:15, 660:5, 660:9, 660:11

mike [1] - 441:3

miles [4] - 400:22, 400:25, 401:3, 489:5

mind [5] - 315:5, 367:12, 367:17, 367:19, 674:23

minivan [1] - 402:2

minor [1] - 403:14

Minsky [22] - 354:21, 359:5, 362:25, 369:13, 369:19, 369:23, 369:25, 398:24, 435:22, 441:4, 441:25, 450:18, 539:7, 548:8, 548:9, 548:25, 565:5, 565:10, 590:7, 600:5, 637:6, 637:7

MINSKY [1] - 298:3

minute [3] - 378:4, 543:7, 623:21

minutes [3] - 486:23, 572:3, 682:20

Miriam [3] - 417:24, 550:2, 686:8

MIRIAM [2] - 295:12, 297:4

misdemeanor [1] - 454:18

misrepresentation [2] - 526:16, 589:9

misrepresenting [2] - 438:25, 439:3

missing [1] - 506:22

Mistake [2] - 311:10

mistake [4] - 311:11, 312:24, 463:14

mistaken [1] - 417:14

misunderstanding [1] - 410:15

model [1] - 568:18

Mohamed [9] - 341:17, 344:17, 344:18, 491:9, 579:14, 579:21, 663:10, 663:12, 688:7

moment [1] - 327:19

Mona [2] - 490:18, 490:19

money [109] - 310:18, 310:19, 316:18, 335:13, 339:18, 364:22, 367:22, 368:12, 368:23, 370:12, 370:13, 370:16, 373:8, 373:18, 374:4, 374:9, 374:11, 378:17, 379:7, 379:12, 379:15, 379:20, 379:21, 379:23, 380:3, 390:5, 391:17, 392:9, 393:14, 400:4, 400:8, 404:24, 414:12, 415:11, 415:12, 419:17, 419:18, 419:20, 419:21, 419:23, 425:24, 426:3, 426:6, 426:8, 426:9, 430:19, 430:20, 431:3, 431:6, 431:8, 431:13, 431:20, 431:21, 433:3, 453:8, 458:14, 460:3, 460:17, 460:19, 460:22, 466:17, 530:6, 531:4, 531:6, 531:9, 533:12, 533:14, 533:18, 533:19, 554:6, 554:21, 554:22, 556:11, 557:8, 560:2, 560:3, 560:4, 563:12, 563:13, 590:14, 590:21, 608:22, 609:8, 615:4, 622:22, 634:21, 634:25, 646:11, 659:9, 659:12, 659:25, 660:23, 669:16, 669:21, 669:25, 670:2, 670:20, 671:12, 671:13, 673:10, 678:16, 678:22, 678:24, 679:2, 679:3, 679:24, 680:3

monitor [1] - 441:2

month [12] - 342:22, 376:18, 376:25, 394:9, 435:15, 465:5, 468:4, 469:16, 476:12, 615:22, 619:20, 665:16

monthly [5] - 371:14, 376:22, 476:14, 590:21, 590:23

Monthly [1] - 376:24

months [20] - 353:23, 393:11, 394:6, 394:17, 394:23, 394:24, 395:4, 395:9, 400:14, 400:25, 430:18, 448:10, 448:14, 448:15, 448:20, 469:16, 655:8, 655:9

morning [3] - 299:11, 299:12, 637:13

mortgage [1] - 573:2

most [1] - 650:6

Most [4] - 384:18, 430:8, 430:12, 555:12

mostly [1] - 645:8

motion [1] - 371:19

motions [1] - 300:4

MOTOR [9] - 295:6, 295:10, 295:15, 295:20, 296:5, 296:9, 296:14, 298:4, 298:10

Motor [391] - 299:21, 299:22, 302:10, 303:5, 303:9, 303:10, 303:14, 309:10, 309:15, 310:7, 310:22, 310:23, 310:24, 311:4, 311:8, 311:11, 311:13, 313:11, 313:19, 328:2, 328:3, 329:20, 330:21, 331:15, 331:22, 332:6, 333:18, 339:15, 341:21, 341:25, 342:4, 345:11, 346:2, 346:5, 348:2, 348:5, 348:8, 349:11, 349:15, 349:17, 349:21, 350:22, 352:15, 353:6, 354:7, 354:8, 355:15, 355:17, 355:20, 356:2, 356:3, 356:13, 356:19, 356:21, 356:24, 357:2, 357:4, 357:5, 357:10, 357:24, 358:24, 360:6, 360:10, 361:4, 361:18, 362:6, 362:8, 362:9, 364:2, 364:11, 365:4, 365:12, 366:21, 367:5, 367:9, 367:13, 367:14, 367:21, 367:23, 368:5, 368:8, 368:13, 368:14, 368:18, 368:20, 368:21, 368:22, 368:23, 369:4, 369:6, 369:8, 369:10, 369:11, 369:15, 369:20, 369:21, 370:2, 371:5, 372:4, 372:8, 372:16, 372:24, 373:4, 373:13, 373:21, 374:17, 374:21, 374:24, 375:3, 375:4, 375:6, 375:10, 375:18, 375:23, 376:3, 376:11, 377:4, 383:15, 387:3, 387:11, 389:9, 389:17, 390:11, 390:16, 394:12, 394:13, 395:10, 399:4, 399:8, 399:9, 399:11, 399:14, 400:3, 400:9, 403:2, 403:19, 404:15, 405:17, 405:18, 405:21, 406:5, 406:9, 406:10, 406:20, 406:21, 407:19, 407:20, 407:21, 408:3, 412:19, 414:21, 415:15, 415:16, 416:9, 416:23, 417:4, 424:12, 424:17, 424:19, 426:15, 426:17, 432:10, 441:5, 441:8, 441:11, 442:14, 444:4, 445:20, 445:22, 445:24, 446:6, 447:9, 447:16, 449:7, 449:17, 450:9, 451:12, 451:14, 451:25, 452:13, 452:16, 452:17, 452:19, 453:3, 453:9, 453:14, 458:2, 458:4, 459:2, 461:6, 471:7, 472:5, 473:12, 473:18, 477:25, 480:6, 480:16, 481:5, 487:20, 487:22, 488:9, 489:14, 489:18, 491:6, 491:7, 491:13, 491:18, 491:21, 492:14, 492:24, 493:4, 493:7, 493:10, 493:13, 493:17, 493:22, 493:23, 494:7, 494:8, 495:10, 495:18, 496:3, 496:7, 496:14, 496:22, 497:12, 497:16, 497:23, 500:4, 500:13, 500:23, 501:13, 501:25, 502:2, 502:16, 504:3, 504:14, 504:24, 505:2, 507:10, 507:24, 511:25, 512:5, 512:12, 512:15, 512:21, 513:3, 513:15, 513:22, 514:7, 514:9, 514:16, 514:25, 515:4, 515:9, 518:5, 518:24, 519:8, 519:14, 526:12, 532:11, 532:13, 532:15, 532:22, 533:5, 533:14, 535:2, 535:4, 536:4, 536:15, 536:17, 536:19, 536:24, 537:3, 539:19, 546:11, 548:10, 550:14, 551:25, 552:19, 552:22, 553:8, 553:12, 554:11, 554:14, 554:17, 555:9, 558:16, 558:20, 559:5, 560:22, 561:10, 570:11, 571:10, 571:24, 572:23, 573:7, 575:24, 576:15, 576:18, 577:7, 577:17, 577:22, 578:5, 578:17, 578:25, 579:13, 580:4, 580:5, 580:17, 580:18, 581:21, 581:22, 581:25, 582:5, 582:9, 582:14, 582:16, 582:19, 582:24, 585:5, 586:2, 586:4, 586:12, 586:17, 586:19, 587:4, 587:13, 588:23, 589:14, 589:15, 589:23, 591:22, 592:3, 594:7, 596:2, 596:21, 596:22, 596:25, 597:9, 597:14, 598:19, 628:18, 629:7, 630:3, 634:12, 641:2, 641:11, 642:4, 663:2, 663:3, 663:8, 663:21, 663:24, 664:11, 685:15, 685:23, 686:9, 686:14, 686:16, 687:6, 687:8, 687:17, 688:5, 688:12, 688:16, 688:19, 688:21, 688:22, 689:4, 689:6, 689:6, 689:9, 689:12, 689:14

Motors [43] - 302:10, 303:4, 303:11, 303:14, 307:8, 307:18, 308:3, 308:15, 309:20, 310:6, 311:9, 311:18, 312:4, 313:2, 314:21, 318:20, 318:23, 319:2, 319:5, 319:9, 319:12, 320:14, 320:19, 320:22, 320:25, 323:4, 323:9, 323:16, 323:22, 323:24, 324:4, 324:8, 324:11, 325:19, 328:10, 328:12, 492:23, 493:2, 499:15, 502:10, 509:5, 509:6, 570:8

mouth [3] - 313:24, 470:4, 679:14

move [4] - 417:7, 462:16, 487:16, 574:14

moved [1] - 303:23

movements [1] - 574:24

movie [1] - 322:21

MR [414] - 299:10, 300:17, 301:24, 302:13, 302:17, 302:20, 302:22, 302:23, 302:24, 303:2, 304:2, 304:5, 304:6, 304:17, 304:20, 304:22, 304:25, 305:3, 305:9, 305:25, 308:6, 308:8, 315:22, 316:6, 321:5, 321:7, 321:9, 321:11, 321:14, 321:16, 321:24, 322:3, 322:7, 322:11, 322:14, 322:18, 323:2, 323:5, 324:14, 324:17, 324:19, 324:20, 324:25, 325:3, 325:5, 325:10, 325:17, 325:20, 326:6, 327:18, 331:16, 332:13, 332:17, 335:15, 335:18, 335:20, 335:21, 335:23, 335:25, 343:11, 344:9, 344:16, 345:9, 345:14, 345:16, 346:4, 346:13, 346:14, 346:17, 346:23, 347:2, 347:15, 347:24, 348:3, 349:3, 350:18, 351:2, 351:6, 358:6, 358:15, 358:16, 358:19, 358:21, 362:13, 362:19, 363:10, 363:12, 365:9, 368:3, 369:7, 369:10, 369:11, 369:13, 370:5, 370:8, 370:18, 370:22, 370:23, 370:25, 371:3, 371:4, 371:6, 371:11, 371:15, 371:18, 371:22, 372:2, 372:6, 375:12, 375:16, 375:20, 376:4, 376:9, 376:13, 377:10, 378:3, 378:5, 381:16, 388:14, 388:16, 388:23, 390:8, 394:20, 394:25, 395:6, 397:20, 398:3, 398:5, 398:7, 398:9, 398:18, 399:10, 400:15, 400:17, 403:14, 405:14, 406:7, 406:8, 406:12, 406:16, 406:22, 406:23, 406:25, 407:3, 407:4, 407:6, 407:10, 407:13, 407:14, 408:12, 408:21, 409:5, 409:7, 409:15, 409:17, 409:20, 409:24, 410:4, 410:7, 410:9, 410:11, 410:14, 410:25, 417:6, 417:21, 421:3, 423:5, 423:13, 423:15, 423:21, 423:25, 424:6, 424:10, 424:15, 425:2, 425:5, 425:6, 425:7, 427:6, 428:7, 430:3, 430:5, 434:12, 434:14, 434:15, 434:17, 435:17, 438:8, 438:19, 438:22, 438:24, 439:7, 439:9, 439:14, 439:18, 439:20, 441:20, 442:5, 442:6, 442:8, 444:21, 450:5, 450:15, 450:20, 451:7, 451:10, 451:20, 451:22, 452:4, 452:8, 452:10, 453:20, 453:22, 454:21, 454:25, 455:5, 455:7, 455:12, 455:14, 455:19, 455:21, 455:23, 455:25, 456:2, 456:4, 456:5, 456:7, 456:25, 457:9, 457:13, 458:16, 461:3, 461:7, 462:2, 462:7, 462:11, 462:17, 464:3, 464:8, 466:19, 466:25, 470:21, 471:21, 477:3, 478:22, 478:25, 479:4, 479:8, 479:12, 479:14, 479:16, 479:21, 480:19, 482:10, 482:20, 483:3, 483:10, 483:15, 483:19, 484:5, 486:8, 486:14, 486:22, 486:24, 487:4, 502:18, 519:4, 519:8, 519:10, 519:11, 522:3, 522:5, 523:13, 535:21, 535:22, 539:3, 545:20, 546:10, 546:17, 547:4, 547:12, 547:19, 547:22, 547:24, 547:25, 548:3, 548:8, 549:8, 549:12, 549:18, 549:23, 556:23, 557:21, 558:4, 570:23, 571:2, 571:18, 573:17, 573:19, 573:20, 574:2, 582:8, 582:11, 583:6, 583:22, 584:7, 584:8, 584:9, 584:11, 584:13, 584:14, 584:15, 587:24, 588:19, 589:4, 590:2, 590:25, 591:16, 591:17, 591:19, 592:19, 592:24, 593:14, 595:15, 595:17, 595:18, 595:22, 599:12, 599:18, 600:19, 601:21, 602:9, 602:13, 604:5, 604:21, 606:5, 606:14, 606:15, 606:16, 606:17, 607:2, 607:20, 612:18, 616:11, 618:23, 620:14, 620:16, 623:20, 623:22, 633:21, 637:5, 637:10, 639:20, 639:23, 639:25, 640:23, 643:3, 643:7, 644:3, 646:22, 647:4, 647:6, 647:8, 647:11, 647:15, 647:18, 647:21, 647:23, 649:15, 650:17, 650:20, 650:21, 650:24, 651:14, 652:2, 652:12, 653:19, 653:22, 654:2, 654:7, 654:8, 657:11, 657:15, 659:7, 660:6, 665:2, 666:5, 667:7, 673:4, 673:14, 673:22, 674:3, 675:9, 675:13, 675:17, 676:3, 676:16, 677:4, 677:20, 678:7, 679:9, 679:16, 680:11, 680:14, 680:18, 681:19, 682:3, 682:15, 682:19, 683:6, 685:5, 685:6, 685:7, 688:4

MS [67] - 439:11, 464:11, 464:14, 464:17, 466:20, 467:3, 468:12, 469:8, 471:22, 472:21, 474:9, 479:2, 479:6, 479:19, 483:6, 483:13, 483:17, 483:21, 486:11, 486:16, 486:20, 603:23, 604:3, 604:18, 608:25, 609:9, 610:16, 611:8, 611:11, 611:16, 611:25, 612:16, 613:4, 613:8, 621:17, 626:5, 626:10, 627:8, 627:12, 627:21, 632:22, 649:22, 650:4, 653:16, 655:21, 656:7, 665:7, 665:23, 666:7, 667:9, 667:21, 673:17, 673:25, 675:3, 675:15, 676:4, 676:18, 678:9, 679:12, 680:15, 680:21, 682:2, 682:5, 682:17, 682:21, 685:6, 689:16

Multipage [4] - 315:25, 545:21, 685:13, 686:20

multiple [4] - 305:12, 328:19, 330:21, 539:16

mumbling [1] - 400:17

Muniz [12] - 442:12, 442:21, 443:8, 443:15, 444:6, 444:14, 444:17, 445:4, 445:15, 446:22, 447:8

Muniz's [1] - 447:3

Murano [1] - 568:13

Muslim [2] - 613:23, 674:16

must [7] - 382:6, 382:14, 387:2, 419:20, 419:23, 424:23, 647:23

N

Nada [24] - 300:16, 341:24, 350:6, 377:3, 429:4, 485:4, 485:9, 551:11, 551:17, 551:20, 551:25, 552:18, 552:21, 553:8, 553:19, 554:10, 555:15, 578:8, 578:10, 597:22, 597:25, 649:12, 649:19, 649:25

NADA [4] - 298:4, 298:5, 298:10, 298:10

Nada's [1] - 484:14

name [96] - 306:12, 306:16, 306:19, 306:21, 306:25, 307:4, 316:21, 316:22, 342:9, 342:24, 343:15, 343:25, 344:2, 346:23, 350:17, 350:19, 351:4, 364:6, 364:9, 364:10, 413:12, 427:17, 427:18, 427:19, 428:16, 441:21, 449:25, 450:4, 450:6, 468:9, 468:10, 468:13, 487:7, 493:19, 509:22, 509:23, 510:9, 511:3, 511:4, 511:13, 511:23, 513:9, 513:10, 514:4, 514:12, 516:6, 516:9, 516:11, 516:17, 517:22, 529:23, 531:3, 555:23, 558:15, 561:5, 561:9, 561:15, 562:6, 566:3, 566:6, 568:17, 573:6, 573:8, 573:10, 574:4, 598:17, 610:12, 615:24, 617:16, 617:17, 628:21, 628:25, 631:4, 642:10, 643:15, 657:23, 657:24, 658:2, 658:4, 658:6, 658:9, 658:12, 658:15, 664:2, 688:4,

688:15, 688:18, 689:11, 689:13, 689:17
named [5] - 313:3, 342:4, 442:11, 529:24, 577:10
NASRIN [2] - 296:7, 297:4
Nasrin [1] - 617:6
nationality [1] - 567:13
nature [2] - 399:17, 462:3
near [1] - 481:12
necessarily [1] - 414:3
necessary [1] - 584:18
need [17] - 325:13, 364:21, 368:11, 368:12, 370:11, 370:12, 371:20, 448:22, 449:3, 457:13, 486:12, 534:4, 549:8, 574:18, 623:4, 659:6, 677:12
needed [6] - 356:15, 362:7, 366:24, 377:7, 532:25, 534:15
needing [1] - 446:17
needs [1] - 332:15
negligent [1] - 320:10
negotiate [2] - 565:11, 675:24
negotiates [2] - 541:4, 622:6
negotiating [1] - 334:20
negotiation [3] - 436:20, 541:18, 542:2
negotiations [4] - 379:4, 380:25, 622:11, 633:17
net [6] - 414:3, 414:6, 414:9, 414:14, 415:17, 416:11
never [89] - 337:16, 338:3, 338:16, 340:3, 340:8, 342:12, 345:6, 361:23, 389:18, 395:12, 395:13, 395:16, 405:5, 416:24, 422:16, 425:19, 426:8, 426:25, 427:4, 427:11, 427:13, 429:2, 429:9, 429:10, 441:7, 463:19, 463:20, 465:22, 469:25, 470:3, 471:18, 478:19, 478:21, 480:9, 480:10, 480:11, 480:13, 486:4, 486:6, 503:7, 505:19, 508:8, 508:11, 509:6, 509:10, 518:6, 518:7, 537:9, 539:20, 539:21, 546:19, 547:3, 552:15, 559:13, 559:15, 560:6, 571:16, 573:8, 578:22, 579:13, 587:3, 594:11, 594:14, 596:16, 596:20, 597:4, 607:8, 607:12, 615:13, 616:22, 617:3, 617:4, 617:20, 620:9, 621:13, 633:2, 635:18, 640:20, 648:20, 648:24, 649:4, 654:20, 658:17, 667:17, 680:9
Never [16] - 395:14, 395:17, 427:14, 478:24, 503:9, 503:10, 507:12, 507:13, 507:14, 508:4, 508:7, 509:12, 518:8, 552:17, 594:16, 655:6
NEW [13] - 295:2, 295:6, 295:10, 295:15, 295:20, 296:5, 296:9, 296:14, 298:4, 298:9, 684:4, 690:4, 690:5
new [2] - 318:11, 393:24
New [232] - 296:18, 296:21, 296:24, 297:5, 297:10, 297:15, 297:21, 298:6, 298:11, 298:16, 299:4, 299:6, 299:21, 314:13, 314:15, 329:20, 330:21, 331:15, 331:21, 332:5, 333:18, 339:15, 341:21, 341:25, 342:4, 345:11, 346:2, 346:5, 348:2, 348:4, 348:8, 349:11, 349:15, 349:17, 349:21, 350:21, 352:15, 353:5, 354:6, 355:14, 355:20, 355:25, 356:3, 356:12, 356:24, 357:2, 357:4, 357:5, 357:24, 358:24, 362:6, 364:2, 364:10, 365:4, 365:12, 367:8, 367:12, 367:14, 368:4, 368:13, 368:19, 368:22, 369:4, 369:8, 369:15, 369:20, 371:4, 372:4, 372:8, 373:4, 373:12, 373:21, 374:23, 375:4, 375:6, 376:2, 376:11, 377:3, 378:15, 383:14, 387:2, 387:11, 389:9, 389:17, 390:16, 393:23, 394:12, 395:10, 399:8, 399:11, 400:3, 400:9, 402:25, 403:19, 404:15, 405:17, 405:20, 406:5, 406:9, 406:20, 407:19, 407:20, 408:3, 412:18, 414:20, 415:15, 416:9, 416:23, 417:3, 418:12, 418:13, 418:15, 418:16, 418:21, 424:11, 424:17, 424:18, 426:15, 426:16, 432:10, 441:5, 441:8, 441:11, 442:14, 444:4, 447:9, 447:16, 449:6, 449:17, 450:8, 452:2, 452:12, 452:16, 453:8, 455:12, 458:3, 461:5, 471:6, 472:5, 473:12, 473:18, 477:25, 480:5, 480:16, 481:5, 488:20, 495:2, 495:4, 495:5, 499:15, 505:2, 509:5, 509:6, 532:12, 546:11, 548:10, 550:14, 551:24, 552:18, 552:22, 553:8, 553:12, 554:11, 554:14, 554:17, 555:8, 558:16, 558:19, 559:5, 560:22, 561:10, 570:11, 578:5, 578:24, 580:4, 580:17, 581:22, 581:24, 582:9, 582:13, 582:19, 586:12, 586:17, 586:19, 587:13, 588:23, 589:15, 589:23, 592:3, 594:8, 596:2, 596:3, 596:21, 596:25, 597:9, 597:11, 597:14, 598:19, 611:14, 622:17, 628:18, 629:6, 630:3, 637:23, 640:25, 663:2, 663:3, 663:8, 663:21, 663:23, 664:10, 684:23, 685:15, 686:9, 687:8, 687:16, 688:5, 688:12, 688:16, 688:19, 689:4, 689:6, 689:9, 689:12, 689:14, 690:9
next [15] - 310:4, 327:11, 366:18, 369:22, 397:22, 417:22, 441:3, 502:20, 507:22, 524:25, 532:7, 574:14, 575:5, 623:5, 651:15
nice [1] - 683:6
Nissan [4] - 468:19, 568:9, 568:11, 568:13
Nobody [5] - 322:19, 428:4, 437:16, 437:22, 567:11
nobody [9] - 322:19, 395:21, 428:12, 440:10, 677:3, 677:7, 679:18, 679:21, 681:15
Non [2] - 503:17, 513:25
Non-Recourse [2] - 503:17, 513:25
None [1] - 567:19
Northern [8] - 343:5, 449:9, 450:8, 485:15, 485:19, 596:2, 597:10, 689:14
NOT [1] - 297:11
not-for-profit [1] - 621:16
Notary [4] - 296:20, 299:3, 684:23, 690:8
note [13] - 345:14, 347:15, 388:10, 388:18, 389:6, 425:2, 452:9, 638:7, 641:21, 666:5, 682:12, 682:19, 682:22
Note [25] - 302:13, 348:3, 375:12, 376:4, 394:20, 438:8, 438:19, 451:10, 451:20, 458:16, 461:3, 461:7, 470:21, 477:3, 478:22, 602:9, 607:20, 626:10, 639:20, 641:24, 673:4, 673:14, 677:20, 678:7, 680:11
noted [3] - 439:19, 479:3, 683:8
nothing [9] - 397:5, 433:8, 454:4, 459:24, 555:4, 590:16, 590:18, 646:4, 652:16
Notice [3] - 296:16, 640:24, 687:16
notice [2] - 315:5, 346:10
noticed [1] - 354:18
November [14] - 432:23, 432:24, 433:4, 433:5, 553:5, 553:6, 567:16, 586:14, 592:8, 597:8, 597:13, 598:4, 687:10
number [27] - 334:3, 334:6, 336:10, 343:23, 343:24, 365:5, 387:13, 469:14, 494:15, 499:3, 506:23,

520:17, 521:10, 521:19, 525:2, 526:2, 529:22, 555:22, 556:4, 556:10, 556:17, 587:7, 587:23, 601:6, 637:3
numbers [5] - 345:20, 346:15, 478:11, 600:25, 688:11
NY [2] - 686:14, 686:16
NYU [1] - 572:25

O

oath [4] - 299:8, 301:7, 466:11, 684:10
object [7] - 302:18, 323:6, 409:21, 410:2, 483:3, 604:7, 677:4
objected [3] - 410:5, 410:21, 655:25
Objection [31] - 462:2, 484:5, 539:3, 570:23, 603:23, 604:3, 604:18, 608:25, 609:9, 610:16, 611:8, 611:11, 611:16, 611:25, 612:16, 613:4, 613:8, 616:11, 621:17, 626:5, 627:8, 627:12, 627:21, 632:22, 649:22, 650:4, 653:16, 655:21, 656:7, 659:7, 660:6
objection [36] - 302:13, 346:12, 347:16, 348:3, 375:12, 376:4, 394:20, 438:8, 438:19, 438:23, 439:8, 439:9, 439:18, 439:20, 451:10, 451:20, 458:16, 461:3, 461:7, 470:21, 477:3, 478:22, 479:3, 479:21, 483:14, 483:18, 602:9, 607:20, 626:11, 639:20, 666:5, 673:4, 673:14, 677:20, 678:7, 680:11
obligated [2] - 528:8, 528:20
obligation [4] - 506:14, 506:24, 523:15, 572:11
obligations [16] - 504:22, 505:4, 505:12, 506:9, 506:13, 521:15, 521:21, 522:13, 525:9, 529:14, 587:12, 587:16, 587:17, 588:20, 589:24, 599:7
obstructed [1] - 334:12
obtain [5] - 612:14, 613:2, 618:11, 623:4, 635:5
obtained [1] - 506:23
obtaining [1] - 576:9
obtains [1] - 591:8
Obviously [1] - 574:21
obviously [1] - 440:15
occur [4] - 412:5, 432:3, 543:25, 545:7
occurred [7] - 331:4, 331:6, 362:5, 362:6, 431:17, 542:3, 544:21
occurs [2] - 537:25, 544:2
October [4] - 307:15, 309:25, 310:8, 652:20
Odyssey [7] - 378:24, 381:12, 381:24, 384:24, 385:2, 418:8, 685:22
OF [10] - 295:2, 295:23, 297:9, 297:18, 298:3, 298:9, 684:4, 684:6, 690:4, 690:5
off-the-record [1] - 537:18
Offer [1] - 397:15
offer [28] - 379:6, 379:10, 379:22, 380:9, 537:19, 537:21, 614:25, 635:8, 635:9, 635:10, 670:18, 670:23, 671:16, 671:18, 671:19, 671:22, 672:9, 672:13, 672:20, 673:7, 673:13, 674:2, 674:7, 674:11, 675:18, 675:19, 675:21, 676:7
offered [3] - 609:18, 670:16, 673:9
Office [1] - 596:15
office [6] - 371:9, 444:7, 484:10, 494:5, 566:14, 579:16
officer [9] - 492:15, 493:3, 578:16, 578:18, 578:22, 578:24, 579:13, 666:19
Officer [1] - 579:6
officers [1] - 579:12
OFFICES [4] - 297:9, 297:18, 298:3, 298:9
offices [1] - 296:16
official [3] - 362:15, 363:22, 685:20
often [4] - 392:25, 444:20, 476:11, 495:18
oftentimes [1] - 408:6
old [4] - 449:6, 572:13, 572:18, 572:20
omission [1] - 529:5
Once [6] - 376:25, 574:25, 630:6, 633:10, 640:12, 659:9
once [4] - 393:7, 557:7, 562:8, 590:19
One [27] - 310:11, 328:6, 329:6, 381:4, 425:12, 445:7, 467:24, 489:22, 489:25, 490:4, 490:17, 500:21, 501:6, 501:7, 501:9, 501:15, 502:2, 576:23, 577:2, 583:19, 589:6, 624:11, 634:3, 634:15, 644:24, 648:21, 667:5
one [96] - 308:10, 318:14, 321:22, 329:10, 329:11, 332:7, 333:25, 334:7, 335:15, 335:16, 335:22, 335:23, 354:15, 355:14, 362:21, 372:9, 373:23, 383:6, 385:3, 387:18, 387:21, 389:22, 391:8, 391:11, 394:18, 399:23, 404:14, 411:23, 417:9, 418:24, 419:16, 420:3, 422:7, 423:7, 423:22, 423:24, 424:2, 432:7, 437:9, 443:20, 459:5, 464:19, 468:4, 469:15, 469:16, 481:10, 481:11, 500:14, 500:15, 503:24, 514:10, 517:4, 532:9, 536:25, 546:20, 546:21, 547:3, 550:18, 552:13, 558:4, 567:5, 567:15, 570:13, 575:2, 577:23, 579:17, 582:12, 583:20, 584:25, 587:24, 591:20, 595:5, 606:22, 613:10, 615:22, 615:25, 617:25, 618:3, 623:8, 624:8, 625:21, 626:6, 637:20, 640:22, 644:11, 645:17, 648:21, 657:9, 658:11, 662:2, 662:17, 665:16, 668:16, 681:3
one-page [1] - 625:21
one-way [2] - 481:10, 481:11
ones [1] - 646:25
ongoing [2] - 403:19, 404:5
online [1] - 448:23
ons [19] - 336:14, 601:20, 601:22, 602:2, 602:8, 603:2, 603:16, 604:10, 604:14, 604:17, 608:16, 608:23, 614:24, 634:18, 635:7, 635:13, 652:11, 652:12, 652:13
onsite [2] - 495:17, 495:18
Onsite [1] - 495:20
oOo [15] - 298:20, 299:9, 358:11, 358:14, 378:7, 408:20, 464:7, 487:3, 546:7, 549:21, 573:25, 623:25, 685:8, 687:23, 689:20
open [8] - 372:23, 373:3, 577:6, 577:13, 577:21, 578:6, 596:23, 597:14
opened [7] - 303:20, 303:24, 312:7, 312:10, 375:5, 375:7, 578:10
opening [2] - 576:10, 594:17
operate [1] - 552:25
operation [4] - 313:14, 450:10, 570:16, 689:15
operations [1] - 522:18
opportunity [2] - 346:11, 584:17
opposed [2] - 511:3, 613:5
option [1] - 662:2
order [42] - 317:9, 318:2, 319:2, 328:3, 328:11, 328:23, 328:25, 329:8, 332:8, 332:10, 332:20, 333:19, 333:20, 334:8, 334:10, 334:24, 334:25, 336:2, 337:4, 358:24, 385:14, 385:18, 386:19, 387:6, 387:25, 388:9, 388:15, 388:20, 389:4, 389:17, 542:13, 542:14, 587:19, 588:9, 612:14, 613:2, 631:20, 635:5, 635:16, 648:4
Order [3] - 296:16, 316:2, 685:13
orders [2] - 328:19, 329:21
organization [1] - 621:16
organized [1] - 480:16
original [2] - 423:3, 423:19
OSORIO [2] - 295:12,

297:4
Osorio [3] - 417:24, 550:2, 686:8
otherwise [1] - 610:24
ourselves [1] - 445:20
outbursts [1] - 322:2
outcome [1] - 690:18
outrageous [1] - 682:10
outside [9] - 314:9, 353:2, 426:13, 426:18, 440:24, 471:4, 480:16, 556:12, 625:2
outstanding [1] - 546:14
overlap [1] - 490:7
overnight [1] - 639:14
owed [1] - 458:2
own [2] - 489:22, 586:21
owned [1] - 509:9
owner [14] - 311:23, 311:24, 312:3, 319:15, 320:11, 477:24, 480:5, 490:12, 491:7, 493:12, 494:7, 495:17, 512:11, 578:16
Owner [3] - 492:8, 492:9, 588:6
owner/dealership [1] - 494:11
owners [2] - 490:10, 490:11
ownership [4] - 489:14, 490:25, 491:12, 491:18
owns [1] - 449:24

P

P.C [1] - 298:3
P.M [3] - 486:25, 487:2, 683:8
package [3] - 331:17, 378:25, 602:15
page [43] - 305:18, 305:21, 306:10, 306:17, 307:13, 308:5, 308:9, 308:23, 318:2, 318:25, 335:21, 355:10, 358:23, 359:2, 359:3, 359:7, 363:6, 383:5, 422:7, 423:15, 503:14, 509:15, 510:9, 518:12, 518:17, 518:19, 518:20, 520:6, 520:10, 520:16, 521:10, 545:21, 547:5, 547:8, 585:8, 586:9, 586:23, 625:21, 626:16, 626:17, 685:17, 686:21
PAGE [7] - 685:2, 685:10, 686:3, 686:18, 687:2, 688:3, 689:3
pages [5] - 304:16, 306:4, 332:2, 418:4, 503:11
Paid [1] - 536:2
paid [28] - 336:22, 347:5, 347:8, 347:16, 347:19, 348:4, 351:19, 373:12, 376:22, 390:24, 391:16, 393:2, 415:2, 457:19, 458:2, 530:24, 533:22, 533:23, 533:24, 535:6, 535:8, 535:9, 535:24, 536:2, 550:22, 557:15, 559:11
Palace [2] - 340:17, 340:21
Palisade [2] - 535:17, 535:19
Palisades [12] - 412:22, 412:24, 413:4, 413:7, 414:20, 414:21, 415:13, 535:21, 535:22, 535:25, 536:2, 557:9
Paliside [1] - 535:20
paper [12] - 309:14, 326:5, 345:17, 356:9, 476:7, 512:8, 516:4, 571:11, 590:8, 642:24, 643:2, 688:9
papers [4] - 345:20, 568:4, 568:15, 688:11
paperwork [7] - 484:15, 541:17, 542:8, 542:10, 564:19, 624:11, 624:12
paragraph [1] - 587:23
paralegal [1] - 610:4
paralegals [1] - 621:20
Park [1] - 298:11
Part [1] - 504:25
part [26] - 327:2, 362:22, 396:17, 398:6, 407:18, 408:2, 411:17, 413:21, 423:13, 423:16, 428:11, 436:20, 477:23, 504:23, 504:25, 506:9, 510:8, 512:11, 521:15, 521:21, 522:13, 529:5, 540:4, 602:15, 618:13
particular [15] - 320:11, 346:8, 371:24, 389:23, 411:13, 418:13, 441:3, 473:13, 473:23, 505:20, 521:9, 536:25, 562:17, 580:14, 645:11
parties [4] - 505:5, 505:9, 505:10, 690:16
partner [2] - 311:22, 311:24
pass [2] - 464:8, 573:21
passenger [1] - 305:22
passenger-vehicles [1] - 305:22
past [3] - 481:8, 505:18, 505:23
Paul [3] - 450:2, 450:4
pay [50] - 332:24, 333:4, 334:15, 334:19, 347:25, 348:7, 352:4, 374:9, 374:14, 374:18, 380:20, 386:6, 386:7, 401:16, 401:18, 413:18, 413:19, 413:21, 415:5, 415:13, 450:25, 451:4, 451:13, 456:19, 457:18, 458:4, 458:14, 458:21, 468:6, 526:3, 529:10, 531:16, 537:14, 537:22, 538:2, 557:9, 557:11, 592:15, 599:20, 602:8, 603:6, 606:4, 615:17, 622:23, 655:16, 672:2, 672:23, 673:10
Pay [1] - 557:10
pay-off [1] - 526:3
paychecks [1] - 350:6
paying [9] - 448:16, 448:17, 448:25, 450:3, 452:14, 452:20, 453:14, 539:9, 678:21
Payment [1] - 366:11
payment [22] - 345:21, 349:24, 351:16, 364:3, 366:9, 367:13, 393:22, 397:14, 401:4, 404:13, 443:2, 534:2, 538:6, 548:19, 590:24, 615:4, 615:6, 615:9, 660:12, 661:13, 670:4, 688:11
payments [15] - 372:13, 372:16, 590:22, 656:25, 659:11, 660:3, 660:13, 660:17, 661:20, 662:8, 662:11, 669:21, 670:6, 670:9, 670:12
payoff [4] - 413:23, 413:24, 413:25, 414:2
payroll [17] - 350:11, 350:12, 350:14, 350:16, 350:20, 350:21, 351:4, 373:14, 373:18, 373:19, 374:2, 374:7, 374:8, 377:22, 688:16, 688:16, 688:18
Payroll [3] - 350:9, 373:16, 374:10
peeing [1] - 456:13
Peeing [1] - 456:16
Pennsylvania [3] - 467:24, 648:21, 689:17
People [2] - 322:15, 554:4
people [64] - 314:8, 314:10, 314:12, 339:9, 339:12, 339:21, 345:22, 347:5, 347:7, 347:8, 347:17, 347:25, 348:7, 352:4, 352:14, 354:6, 365:11, 374:14, 384:18, 410:10, 418:7, 418:8, 421:18, 425:23, 428:25, 429:7, 429:11, 429:16, 429:18, 430:12, 430:14, 431:13, 431:15, 432:6, 433:6, 433:9, 448:8, 448:20, 469:20, 469:21, 485:2, 485:4, 485:9, 495:16, 554:20, 554:25, 555:9, 555:15, 555:21, 556:3, 560:12, 568:20, 619:16, 624:6, 637:17, 648:2, 650:9, 656:4, 657:3, 658:11, 669:3, 681:4
per [6] - 415:5, 415:6, 476:11, 476:12
percent [28] - 310:10, 310:11, 337:5, 355:12, 391:7, 391:8, 391:9, 391:21, 391:25, 392:5, 392:6, 392:10, 392:11, 392:12, 392:17, 392:20, 392:23, 393:6, 393:19, 415:19, 421:2, 421:15, 425:12, 490:17, 590:8, 637:20, 655:14
percentage [1] - 400:9
perfectly [2] - 450:22, 462:20
performance [2] - 345:21, 688:11
perhaps [1] - 666:2
period [4] - 370:23, 406:25, 575:14, 634:12
perjury [1] - 301:15
permanent [1] - 352:23
permanently [2] - 349:10, 349:12
permit [1] - 455:24
person [15] - 345:17, 523:18, 542:5, 566:8, 575:2, 577:5, 577:12, 605:14,

622:21, 623:3, 624:14, 627:5, 644:14, 663:6, 688:10
personal [3] - 346:15, 373:9, 373:10
personally [10] - 306:20, 352:16, 369:17, 451:7, 451:8, 454:6, 454:7, 458:21, 458:22, 685:19
personnel [3] - 345:15, 345:19, 688:10
pertaining [1] - 370:19
Peter [1] - 549:24
PETER [1] - 297:6
phone [16] - 322:10, 322:11, 343:23, 343:24, 380:9, 555:22, 556:4, 556:17, 566:9, 566:10, 620:23, 620:24, 621:5, 630:13, 674:23, 674:25
Phonetically [1] - 577:11
Photocopy [3] - 362:15, 685:20, 685:21
physically [2] - 563:17, 566:15
pick [1] - 302:7
piece [3] - 345:16, 598:15, 688:9
pieces [1] - 624:12
place [13] - 412:2, 412:4, 426:13, 433:10, 444:19, 444:24, 513:7, 552:24, 554:5, 554:25, 566:11, 629:17, 630:2
placed [1] - 631:25
Plaintiff [5] - 295:4, 295:8, 295:18, 296:3, 296:7
plaintiff [2] - 589:25, 600:20
PLAINTIFF'S [2] - 685:10, 686:3
plaintiff's [3] - 593:20, 593:22, 626:3
Plaintiff's [33] - 304:7, 304:10, 304:13, 315:23, 316:3, 331:19, 331:24, 332:3, 358:7, 358:8, 362:17, 381:18, 390:11, 397:25, 408:16, 417:25, 418:3, 472:23, 474:13, 557:22, 557:25, 558:6, 584:12, 619:22, 620:10, 623:9, 624:12, 624:24, 625:21, 626:2, 626:9, 627:2, 641:7
Plaintiff/Action [2] - 297:9, 297:14
plaintiffs [5] - 354:23, 406:12, 406:17, 574:6, 669:5
Plaintiffs [1] - 295:13
Plaintiffs/Actions [1] - 297:3
plan [6] - 533:25, 535:6, 535:9, 535:11, 535:15, 606:13
Planet [246] - 299:22, 301:3, 302:10, 303:5, 303:9, 303:10, 303:13, 303:19, 303:23, 309:10, 309:15, 310:7, 310:24, 311:3, 311:8, 311:11, 311:13, 313:19, 328:2, 328:3, 354:8, 355:17, 356:13, 356:19, 356:21, 357:10, 360:6, 360:10, 361:4, 361:17, 362:8, 362:9, 366:21, 367:5, 367:21, 367:23, 368:8, 368:13, 368:18, 368:21, 368:23, 369:6, 369:10, 369:11, 369:14, 369:21, 370:2, 371:5, 372:15, 372:24, 374:17, 374:20, 375:3, 375:10, 375:18, 375:23, 390:10, 390:16, 394:13, 395:9, 399:4, 399:8, 399:14, 405:17, 405:21, 406:10, 406:21, 407:19, 407:21, 408:3, 414:21, 415:16, 445:20, 445:22, 445:24, 446:6, 451:12, 451:14, 451:24, 452:13, 452:17, 452:19, 453:3, 453:8, 453:14, 458:2, 458:4, 459:2, 487:20, 487:22, 488:9, 488:16, 488:18, 488:22, 489:2, 489:13, 489:14, 489:17, 489:18, 490:12, 491:2, 491:6, 491:7, 491:13, 491:18, 491:21, 492:6, 492:11, 492:14, 492:23, 493:4, 493:7, 493:10, 493:13, 493:17, 493:21, 493:23, 494:7, 494:8, 494:10, 494:14, 494:19, 495:3, 495:10, 495:17, 496:2, 496:7, 496:14, 496:22, 497:9, 497:11, 497:14, 497:16, 497:23, 498:5, 498:9, 498:12, 498:19, 499:2, 500:4, 500:13, 500:23, 501:13, 501:25, 502:2, 502:10, 502:15, 504:2, 504:14, 504:23, 507:10, 507:24, 508:5, 508:9, 511:25, 512:5, 512:12, 512:15, 512:20, 513:2, 513:15, 513:22, 514:7, 514:9, 514:16, 514:25, 515:4, 515:9, 518:5, 518:21, 518:24, 519:8, 519:14, 519:20, 519:22, 520:2, 520:5, 520:9, 520:11, 521:6, 526:12, 532:10, 532:15, 532:21, 533:5, 533:14, 535:2, 535:4, 537:3, 539:19, 548:10, 570:5, 570:12, 570:13, 570:16, 570:21, 570:24, 571:24, 572:23, 573:7, 575:24, 576:15, 576:18, 577:7, 577:17, 577:22, 578:17, 579:12, 580:4, 580:17, 581:21, 581:24, 582:5, 582:16, 582:24, 585:5, 586:2, 586:4, 586:17, 586:19, 587:3, 587:13, 587:25, 588:23, 589:14, 589:23, 591:22, 594:7, 595:16, 595:20, 596:22, 628:18, 629:7, 634:12, 641:11, 685:23, 687:6, 688:20, 688:22, 689:6, 689:9
planned [1] - 535:14
planners [2] - 580:22, 581:4
planning [2] - 412:15, 412:17
plate [1] - 536:4
play [1] - 432:6
Plaza [1] - 353:14
plea [1] - 457:11
Pleasantville [1] - 297:5
Plus [1] - 415:14
plus [2] - 416:16, 604:16
pocket [3] - 419:18, 419:20, 671:15
Pocketing [1] - 419:21
pocketing [1] - 419:23
point [17] - 403:14, 408:24, 422:19, 459:5, 488:2, 497:10, 532:11, 541:11, 549:13, 576:7, 589:21, 628:24, 633:13, 634:17, 638:22, 646:5, 675:6
pointing [6] - 332:14, 386:4, 425:3, 439:12, 439:14, 439:16
points [2] - 391:12, 638:9
police [11] - 553:21, 553:25, 554:2, 554:7, 554:11, 554:13, 554:16, 564:7, 607:24, 608:2, 666:19
policies [2] - 339:21, 339:24
policy [4] - 333:17, 333:18, 337:12, 662:19
poor [1] - 612:10
position [4] - 474:7, 476:15, 491:25, 538:3
Position [1] - 492:2
positions [1] - 579:17
possession [1] - 424:7
possible [5] - 327:16, 448:19, 661:8, 661:10, 661:12
possibly [1] - 456:9
Post [1] - 596:15
potential [1] - 455:17
power [3] - 493:12, 493:22, 494:2
practices [3] - 485:17, 522:17, 523:7
precinct [2] - 532:7, 564:2
premium [1] - 414:11
prepare [2] - 642:24, 642:25
prepared [6] - 325:21, 325:22, 326:2, 326:8, 625:6, 641:25
prepares [1] - 642:5
preparing [1] - 641:16
pres [1] - 510:13
PRESENT [1] - 297:11
present [11] - 345:12, 346:3, 368:9, 370:10, 371:2, 379:3, 407:3, 688:12, 688:21, 689:7, 689:10
preserve [2] - 437:13, 437:16
Preserve [1] - 437:18
president [41] - 318:5, 318:13, 320:9, 320:11, 320:14, 320:18, 320:21, 320:25, 323:4, 323:8, 323:16, 323:21, 323:23, 323:25, 324:3, 324:8, 324:11, 325:15, 325:18, 325:22, 492:18, 493:7, 510:13,

513:2, 513:5, 513:11, 513:15, 513:18, 513:21, 521:5, 521:6, 579:7, 579:18, 579:21, 579:24, 585:25, 586:11, 595:13
President [1] - 579:7
press [2] - 340:22, 340:24
pressure [2] - 530:4, 531:5
presumes [1] - 394:21
pretty [2] - 394:25, 462:17
prevent [1] - 440:7
prevents [1] - 455:9
previous [1] - 578:13
previously [10] - 385:13, 450:9, 547:11, 557:15, 562:22, 641:7, 643:9, 652:4, 652:19, 689:14
PRFD [5] - 584:7, 584:10, 593:20, 593:22, 593:24
PRFD000000 [1] - 584:4
PRFD000004 [1] - 584:2
PRFD000020 [3] - 651:18, 654:3, 687:19
PRFD000022 [1] - 636:11
PRFD000042 [2] - 651:23, 687:22
price [55] - 329:9, 329:24, 330:12, 330:16, 333:3, 334:9, 334:10, 334:11, 337:6, 378:22, 384:3, 384:9, 384:14, 384:16, 385:5, 385:17, 386:5, 387:6, 387:8, 387:12, 387:16, 387:20, 388:13, 388:20, 389:4, 389:7, 389:13, 400:13, 401:4, 408:7, 412:11, 416:2, 416:10, 416:13, 418:18, 418:25, 419:2, 419:3, 486:4, 541:9, 580:9, 580:13, 602:17, 602:22, 602:25, 603:5, 603:21, 604:11, 604:12, 604:13, 608:17, 609:6, 614:23, 622:6, 622:14
prices [3] - 330:22, 331:8, 402:3
primary [2] - 386:25, 389:7
print [4] - 329:4, 382:4, 383:18, 642:6
printed [4] - 382:4, 561:9, 638:17, 638:19
printed-out [1] - 561:9
printout [1] - 411:20
privacy [2] - 346:8, 346:20
probation [3] - 463:14, 463:22, 463:23
problem [42] - 320:4, 330:18, 339:17, 339:18, 340:18, 443:21, 453:6, 463:13, 465:8, 465:18, 468:3, 477:13, 477:15, 481:2, 485:7, 501:22, 506:20, 507:20, 529:8, 531:8, 548:7, 554:3, 555:6, 565:9, 566:18, 566:24, 566:25, 568:21, 571:13, 578:4, 578:11, 595:3, 598:20, 634:13, 645:6, 645:7, 645:14, 646:18, 646:19, 664:15, 677:15, 680:23
problems [11] - 339:2, 417:12, 555:20, 556:21, 629:14, 629:21, 629:22, 646:15, 646:24, 647:13, 649:3
procedure [3] - 544:16, 618:10, 623:7
procedures [1] - 623:8
proceed [2] - 575:11, 591:12
process [2] - 640:4, 683:2
processed [2] - 350:21, 688:16
procured [1] - 506:21
Produce [3] - 688:9, 688:19, 689:8
produced [15] - 345:6, 359:14, 362:25, 363:9, 369:18, 390:15, 398:21, 398:23, 405:6, 411:16, 420:8, 420:13, 420:15, 473:4, 626:2
product [6] - 329:11, 330:10, 354:25, 407:17, 407:20, 407:22
production [9] - 345:10, 345:25, 359:5, 368:4, 368:7, 369:3, 390:17, 405:15, 405:20
products [14] - 330:4, 330:6, 330:7, 336:15, 397:19, 405:23, 406:3, 406:4, 406:14, 406:20, 408:2, 557:12, 606:21, 689:9
Profit [2] - 410:9, 410:22
profit [15] - 396:19, 396:21, 397:2, 397:4, 397:9, 397:13, 402:5, 402:7, 407:21, 408:4, 408:8, 410:6, 410:18, 416:19, 621:16
profits [1] - 397:18
program [1] - 638:21
programmed [3] - 438:5, 438:13, 438:15
promise [1] - 386:21
promised [4] - 430:17, 445:13, 447:8, 447:15
promising [1] - 448:8
proof [2] - 345:21, 688:11
proper [6] - 451:25, 452:14, 452:21, 452:22, 453:15, 495:5
property [1] - 449:24
prosecuted [1] - 450:25
Prosecuted [1] - 451:2
Protection [1] - 305:22
protection [3] - 354:25, 407:18, 652:9
protest [11] - 480:15, 480:24, 481:6, 607:22, 669:15, 670:16, 670:25, 675:22, 675:25, 676:6, 676:10
protesters [5] - 481:8, 481:12, 481:18, 483:24, 484:4
protests [3] - 480:17, 484:8, 484:12
provide [10] - 343:15, 349:7, 350:22, 377:13, 508:14, 588:8, 603:6, 688:17, 688:18, 688:20
Provide [1] - 689:5
provided [10] - 376:7, 406:2, 478:3, 533:11, 534:20, 589:11, 593:6, 633:14, 637:14, 668:4
provides [1] - 589:6
providing [2] - 429:6, 669:17
provisions [4] - 548:18, 589:6, 592:14, 593:3
public [6] - 456:17, 456:18, 456:20, 457:7, 513:18, 515:7
Public [4] - 296:20, 299:3, 684:23, 690:8
publicity [2] - 612:14, 613:2
Puerto [1] - 442:17
pull [1] - 666:20
pulled [1] - 481:13
punish [1] - 361:25
punishments [1] - 301:13
purchase [24] - 365:23, 379:4, 397:8, 413:15, 419:3, 471:10, 496:18, 497:2, 499:17, 499:25, 500:5, 543:16, 602:6, 602:22, 603:4, 603:16, 603:21, 604:11, 604:12, 604:13, 608:17, 608:22, 622:14, 635:6
purchased [11] - 381:9, 382:2, 406:15, 416:5, 421:25, 468:17, 471:19, 497:5, 500:6, 527:5, 648:19
purchases [2] - 328:4, 328:11
purchasing [2] - 354:6, 496:21
purported [1] - 531:20
purpose [1] - 488:25
Pursuant [1] - 599:4
pursuant [2] - 296:15, 591:9
pushing [1] - 533:25
put [45] - 304:13, 309:11, 313:23, 329:15, 331:18, 345:2, 345:12, 345:23, 346:10, 346:21, 347:11, 347:21, 372:13, 373:8, 378:18, 378:19, 383:13, 385:12, 395:18, 427:19, 441:18, 464:2, 470:3, 508:14, 513:4, 513:5, 560:14, 562:15, 571:17, 580:19, 596:15, 596:16, 598:9, 600:13, 601:23, 604:10, 605:23, 608:3, 618:5, 628:8, 630:7, 634:9, 657:17, 671:25, 679:14
Put [3] - 483:19, 603:21, 634:13
Putting [1] - 505:16
putting [2] - 358:17, 359:6

Q

Queens [2] - 457:20, 457:21
QUESTION [1] - 434:21

questioning [4] - 325:6, 581:7, 600:22, 616:15
questions [49] - 299:18, 301:22, 302:5, 305:13, 322:4, 325:9, 355:9, 365:10, 377:19, 411:2, 421:4, 427:8, 427:10, 455:8, 482:6, 482:22, 487:12, 487:13, 487:15, 487:20, 503:25, 508:18, 549:13, 549:16, 550:3, 571:22, 574:9, 574:16, 577:4, 581:8, 587:8, 591:20, 592:11, 618:10, 619:12, 628:3, 647:19, 647:24, 652:8, 657:12, 657:17, 665:3, 667:22, 675:14, 675:16, 676:15, 676:17, 677:14, 680:20
quick [1] - 592:11
quickly [1] - 522:8
quite [1] - 327:16
quote [1] - 368:16

R

raise [1] - 637:19
raising [1] - 609:6
ramifications [1] - 588:17
rarely [1] - 646:20
rate [8] - 391:11, 391:21, 391:25, 445:9, 449:3, 637:14, 637:15, 655:13
rather [1] - 410:18
reach [1] - 545:12
read [24] - 304:24, 309:14, 312:5, 312:6, 318:8, 326:17, 337:9, 337:10, 340:24, 386:23, 386:24, 434:17, 434:19, 474:3, 476:8, 486:17, 486:18, 599:17, 612:20, 612:22, 666:8, 666:11, 667:19, 684:9
Read [1] - 318:9
reading [2] - 400:16, 523:2
ready [1] - 411:2
real [1] - 336:10
realize [3] - 418:8, 418:10, 673:23
really [36] - 305:4, 307:21, 313:16, 322:7, 326:19, 328:22, 342:25, 357:11, 369:16, 370:11, 374:22, 380:24, 381:5, 396:10, 403:8, 436:12, 443:5, 445:19, 447:10, 448:4, 453:10, 475:24, 477:12, 489:15, 506:7, 507:12, 515:21, 539:14, 548:14, 554:12, 568:16, 571:18, 617:7, 624:22, 656:16, 675:4
reason [9] - 465:19, 557:19, 570:18, 590:9, 601:23, 632:10, 643:24, 644:20, 655:9
receipt [8] - 558:15, 558:22, 558:24, 559:3, 559:6, 559:11, 559:14, 559:16
Receipt [3] - 557:24, 559:4, 686:13
receipts [2] - 559:21, 559:23
Receive [1] - 401:15
receive [10] - 377:3, 392:4, 392:9, 392:10, 392:22, 401:13, 530:6, 548:22, 559:10, 563:12
received [10] - 354:24, 359:4, 467:17, 535:3, 539:17, 560:3, 560:6, 602:14, 606:12, 620:24
receiving [2] - 354:7, 469:23
recess [4] - 378:6, 486:25, 546:6, 573:24
recognize [21] - 305:15, 306:16, 306:19, 306:21, 306:23, 306:25, 307:4, 307:20, 316:11, 390:19, 411:4, 427:15, 473:5, 473:8, 561:11, 573:15, 584:21, 625:14, 652:21, 654:4, 658:2
recollection [5] - 515:16, 515:19, 616:20, 618:7, 633:3
recommended [1] - 317:15
record [61] - 305:7, 332:15, 345:14, 358:13, 362:19, 378:5, 403:17, 408:19, 408:23, 409:3, 409:4, 409:6, 409:8, 409:13, 409:16, 409:18, 409:21, 425:2, 428:7, 434:19, 439:8, 439:10, 439:21, 442:8, 442:10, 452:8, 452:10, 453:18, 456:25, 457:3, 464:4, 464:6, 474:16, 486:18, 486:24, 537:18, 547:4, 549:18, 549:20, 573:24, 583:17, 583:22, 583:24, 593:17, 612:22, 618:23, 618:25, 623:24, 649:15, 649:17, 652:2, 665:5, 666:11, 667:19, 667:23, 682:12, 682:18, 682:22, 684:12, 684:13, 690:13
recording [9] - 434:2, 434:8, 434:23, 435:5, 435:9, 438:2, 440:17, 440:22, 470:13
recordings [9] - 434:11, 437:13, 437:17, 437:20, 437:24, 438:18, 440:7, 440:11, 449:16
records [11] - 368:4, 368:8, 368:10, 369:4, 370:6, 370:9, 370:19, 370:21, 559:13, 688:19, 688:20
recoup [1] - 526:6
Recourse [2] - 503:17, 513:25
recover [1] - 526:18
redacted [1] - 347:9
reduced [1] - 614:23
refer [4] - 314:7, 333:18, 432:7, 563:25
Refer [1] - 314:8
referenced [1] - 547:13
references [5] - 546:24, 547:18, 547:20, 547:21, 547:23
References [1] - 547:24
referencing [20] - 304:9, 316:2, 331:22, 410:6, 417:23, 435:18, 453:20, 474:12, 548:16, 620:14, 620:19, 633:24, 685:11, 685:13, 685:15, 686:7, 686:13, 686:15, 687:12, 687:14
referred [4] - 426:5, 426:7, 513:20, 515:3
referring [6] - 409:11, 421:6, 504:6, 504:9, 510:15, 523:10
refinance [16] - 393:12, 394:5, 430:17, 430:19, 430:21, 445:13, 447:8, 448:9, 448:21, 655:8, 655:10, 655:19, 656:14, 656:15, 656:18, 657:4
refinanced [4] - 394:8, 394:15, 395:3, 656:23
refinancing [4] - 395:8, 446:15, 656:5, 656:21
reflect [3] - 332:16, 428:7, 452:10
refresh [4] - 521:20, 522:8, 523:5, 569:14
refund [5] - 336:20, 426:6, 433:3, 567:9, 567:18
refunds [1] - 339:6
refuse [1] - 321:16
refusing [1] - 325:10
regard [3] - 686:10, 686:14, 686:16
regarding [12] - 346:6, 364:16, 437:11, 492:23, 492:25, 532:6, 581:8, 587:8, 637:18, 686:12, 689:7, 689:10
register [1] - 508:16
registered [1] - 615:23
registration [2] - 305:22, 355:2
regular [3] - 402:3, 404:11, 595:5
regularly [1] - 337:20
rehash [1] - 648:17
reimburse [1] - 371:10
REINIG [1] - 296:23
reintroduce [1] - 600:17
reiterate [1] - 405:15
reject [3] - 478:10, 479:5, 480:6
rejected [3] - 478:16, 479:17, 480:11
relate [1] - 527:5
related [11] - 345:25, 354:22, 363:3, 368:25, 390:18, 406:13, 437:10, 454:3, 491:10, 574:6, 690:16
relationship [25] - 302:9, 302:12, 302:21, 303:4, 303:6, 303:7, 303:8, 489:17, 490:21, 496:3, 496:15, 496:23, 497:6, 497:23, 498:6, 498:19, 498:23, 499:16, 499:23, 500:3, 501:2, 504:2, 519:25, 550:4
relative [1] - 650:8
relax [1] - 325:8
release [3] - 340:23, 340:25, 530:5
relevancy [7] - 375:13, 376:5, 451:11, 451:21, 451:24, 458:17,

483:4
relevant [2] - 396:10, 483:8
relieve [1] - 676:7
remain [1] - 587:19
remarking [1] - 398:8
remedies [4] - 588:25, 589:2, 592:21, 613:5
Remember [1] - 537:17
remember [67] - 300:6, 312:10, 317:20, 328:16, 328:20, 342:16, 375:11, 376:6, 378:9, 378:12, 378:14, 381:11, 400:6, 400:7, 400:11, 426:21, 427:2, 429:23, 430:6, 435:11, 435:19, 435:25, 442:13, 445:25, 447:10, 447:11, 447:13, 450:14, 453:7, 453:12, 453:17, 457:17, 457:22, 458:10, 467:8, 467:23, 468:8, 478:13, 484:9, 494:16, 497:11, 498:2, 519:15, 521:17, 567:20, 568:6, 568:10, 568:16, 568:19, 569:13, 569:19, 570:19, 575:19, 581:19, 590:5, 600:21, 601:3, 601:7, 616:16, 617:6, 618:3, 618:4, 618:8, 629:5, 646:13, 664:8, 669:16
Remind [1] - 355:13
remind [3] - 299:15, 327:24, 359:21
remit [1] - 404:13
remitting [1] - 451:25
removed [1] - 628:25
removing [1] - 597:22
rent [1] - 450:3
rep [4] - 515:12, 565:22, 565:25, 566:13
repaid [1] - 537:10
Repeat [1] - 408:10
repeat [3] - 401:11, 487:13, 609:19
rephrase [12] - 397:19, 439:5, 439:23, 462:18, 469:9, 480:2, 574:11, 602:13, 656:2, 673:21, 677:24, 681:2
report [11] - 485:2, 485:4, 485:9, 532:7, 564:3, 564:5, 564:8, 660:12, 660:13, 662:7, 662:8
reported [1] - 373:25
Reporter [1] - 690:7
REPORTER [1] - 434:21
reporter [10] - 296:20, 299:16, 300:3, 434:20, 486:19, 574:22, 575:2, 612:23, 666:12, 667:20
REPORTING [1] - 296:23
repossess [3] - 591:14, 660:16, 661:6
repossession [1] - 662:5
represent [10] - 299:19, 318:16, 318:19, 319:9, 319:11, 369:20, 370:2, 487:8, 574:5, 603:3
representation [4] - 517:17, 525:14, 526:17, 588:5
Representations [1] - 521:12
representations [6] - 522:2, 522:9, 525:22, 528:23, 588:3, 633:18
representative [15] - 307:18, 308:3, 334:5, 342:4, 363:16, 396:8, 396:17, 413:3, 413:6, 459:6, 459:9, 539:18, 562:8, 576:4, 657:20
representative's [1] - 396:11
representing [1] - 609:7
represents [2] - 369:14, 547:2
repurchase [13] - 506:25, 507:7, 507:11, 508:2, 508:24, 509:10, 525:10, 525:13, 525:16, 525:23, 590:2, 591:3, 650:18
Repurchase [2] - 508:9, 525:5
Repurchased [1] - 506:17
repurchasing [2] - 469:11, 591:6
Request [1] - 584:12
request [9] - 346:11, 349:6, 370:6, 371:23, 376:16, 406:18, 441:24, 593:20, 593:22
REQUESTED [2] - 688:2, 689:2
requested [5] - 354:21, 390:17, 600:2, 600:8, 688:17
requesting [1] - 370:9
requests [5] - 541:12, 592:21, 599:5, 606:8, 650:18
require [4] - 347:13, 394:4, 525:9, 631:9
required [5] - 482:7, 508:2, 529:10, 543:23, 605:19
requirement [3] - 603:15, 635:24, 636:4
requirements [1] - 644:11
requires [2] - 368:16, 389:8
reserve [17] - 390:25, 391:4, 393:5, 393:13, 393:21, 394:3, 394:10, 394:14, 395:7, 396:12, 396:14, 396:19, 397:5, 397:14, 645:21, 645:25, 646:5
Reserve [3] - 391:2, 391:5, 393:3
resolution [1] - 514:17
resolve [6] - 555:20, 556:20, 566:20, 607:6, 607:7, 609:20
respect [21] - 487:20, 490:8, 496:8, 501:5, 502:3, 538:23, 542:24, 575:18, 587:14, 589:24, 590:4, 593:5, 599:6, 599:13, 599:15, 599:22, 639:3, 639:18, 651:3, 651:8, 651:11
respond [2] - 451:23, 663:17
responded [2] - 606:7, 664:12
respondent [2] - 319:3, 319:6
Respondent [1] - 319:4
responding [1] - 663:15
response [6] - 363:2, 398:24, 420:8, 504:19, 584:11, 668:6
responses [1] - 606:11
responsibilities [5] - 495:8, 495:10, 495:13, 506:5, 512:5
responsibility [4] - 426:11, 678:18, 678:19, 680:10
responsible [12] - 527:15, 527:21, 593:7, 663:14, 677:2, 677:19, 678:6, 679:2, 679:5, 679:25, 680:4, 681:9
responsive [1] - 665:21
rest [1] - 491:4
result [12] - 301:12, 396:25, 499:6, 520:9, 527:22, 529:4, 533:10, 534:13, 534:19, 538:8, 678:16, 683:3
resume [2] - 537:22, 573:22
retail [47] - 306:7, 306:11, 307:7, 359:3, 359:8, 359:14, 359:17, 359:25, 362:22, 362:24, 363:6, 403:23, 422:2, 423:5, 423:7, 496:8, 496:18, 497:2, 499:7, 499:17, 499:25, 500:5, 500:6, 500:12, 502:4, 508:3, 521:9, 523:10, 528:22, 529:8, 542:18, 543:17, 550:15, 552:12, 560:17, 560:21, 562:9, 562:15, 591:9, 606:19, 638:14, 638:24, 639:11, 652:3, 667:12, 667:25, 685:18
Retail [5] - 503:18, 651:16, 651:21, 687:18, 687:21
retained [2] - 685:19, 688:9
return [11] - 393:19, 393:21, 431:13, 545:9, 563:15, 567:8, 567:17, 615:8, 615:23, 670:19, 671:2
returned [5] - 395:8, 471:25, 596:8, 596:9, 638:11
returning [1] - 472:2
returns [1] - 563:14
reverse [1] - 615:7
review [14] - 326:14, 472:8, 472:10, 472:14, 477:17, 477:25, 571:5, 577:6, 578:2, 578:9, 581:2, 584:17, 616:24, 631:18
reviewed [7] - 326:11, 336:25, 505:17, 505:25, 571:8, 663:6, 664:12
reviews [2] - 345:21, 688:11
Rican [1] - 442:17
RICHARD [3] - 298:7, 298:9, 298:12
Richard [13] - 316:8, 317:16, 408:22, 409:10, 479:2, 483:22, 486:12, 673:17, 676:4, 676:18, 678:9, 682:2, 682:22
ridiculous [1] - 483:12
right-hand [3] - 510:3, 511:11, 517:5
rights [9] - 454:22, 455:2, 455:13, 456:3, 504:22, 505:4, 505:10,

589:3, 591:8
ripped [1] - 556:7
risk [1] - 394:2
Road [2] - 297:5, 298:5
robbing [1] - 428:19
Robert [2] - 442:12, 487:7
ROBERT [1] - 298:17
role [6] - 315:6, 315:13, 315:16, 511:25, 512:4, 512:5
roll [1] - 608:16
room [9] - 378:4, 649:13, 654:17, 665:12, 666:10, 666:13, 668:12, 669:3, 683:2
routinely [3] - 477:17, 477:25, 478:8
royal [1] - 302:24
RQ [13] - 343:11, 344:9, 344:16, 345:9, 349:3, 350:18, 368:3, 375:16, 376:9, 405:14, 441:20, 450:5, 468:12
rubber [1] - 682:16
rules [2] - 574:15, 644:9
ruling [1] - 347:13
run [4] - 473:22, 481:17, 625:2, 678:23
runaround [3] - 446:17, 446:20, 446:21
running [4] - 449:5, 495:15, 513:7
RYAN [1] - 298:14
Ryan [5] - 545:23, 546:3, 547:6, 686:21, 686:23

S

s/h/a [2] - 298:5, 298:10
salary [19] - 373:11, 374:20, 374:23, 375:2, 375:9, 375:17, 375:22, 375:25, 376:2, 376:10, 377:3, 474:4, 476:8, 476:12, 478:2, 478:4, 688:22, 688:23, 689:4
Salary [1] - 374:22
sale [72] - 303:11, 328:19, 328:24, 329:3, 329:9, 329:21, 330:3, 330:4, 330:6, 330:7, 330:10, 330:22, 331:8, 331:14, 332:5, 332:8, 332:10, 332:20, 333:25, 334:2, 334:19, 336:15, 337:4, 337:6, 337:7, 337:8, 337:11, 338:14, 338:16, 378:19, 378:20, 396:20, 396:24, 397:10, 397:15, 397:16, 397:19, 400:10, 405:22, 406:4, 406:13, 406:19, 407:22, 412:11, 415:24, 416:2, 416:10, 522:18, 522:21, 541:9, 551:5, 557:12, 598:9, 601:13, 601:21, 601:22, 602:2, 602:17, 602:21, 603:12, 605:11, 606:21, 634:23, 638:15, 639:4, 639:8, 639:12, 640:16, 652:12, 652:13, 673:24, 689:9
Sale [1] - 334:11
sales [21] - 306:11, 330:21, 331:7, 341:18, 342:3, 360:2, 384:10, 384:12, 390:4, 408:4, 452:15, 452:21, 453:15, 453:21, 453:23, 541:16, 602:25, 663:9, 664:6, 664:11, 688:8
salesman [12] - 329:3, 332:23, 335:2, 335:11, 343:5, 386:12, 386:16, 386:17, 388:21, 389:24, 615:19, 668:15
salespeople [3] - 385:4, 387:10, 387:11
salesperson [7] - 343:17, 387:19, 541:3, 541:5, 542:4, 622:6, 688:5
sanctions [1] - 301:13
sand [1] - 325:13
SANTANDER [1] - 298:15
Santander [131] - 328:5, 354:13, 355:24, 356:3, 356:16, 356:22, 362:7, 367:2, 367:12, 368:21, 422:3, 422:5, 422:8, 422:12, 422:15, 422:16, 427:20, 428:11, 487:8, 496:4, 496:7, 496:11, 496:13, 496:20, 496:21, 497:5, 497:9, 497:18, 497:24, 498:2, 498:7, 498:12, 498:17, 498:19, 499:4, 499:7, 499:16, 499:24, 500:3, 500:7, 500:14, 500:20, 502:22, 503:15, 504:2, 504:13, 504:23, 504:25, 508:14, 508:18, 515:13, 518:5, 519:25, 520:10, 523:24, 524:5, 525:22, 526:2, 526:12, 526:17, 527:2, 527:16, 527:22, 528:9, 528:21, 529:11, 530:9, 530:25, 531:10, 531:21, 532:4, 532:18, 533:7, 533:10, 534:9, 534:14, 534:20, 534:25, 535:24, 536:8, 537:3, 537:4, 537:5, 537:8, 537:9, 537:10, 537:21, 538:2, 538:6, 538:11, 538:15, 538:19, 539:17, 540:5, 540:17, 540:22, 543:4, 543:6, 543:22, 545:3, 545:5, 545:11, 545:14, 548:16, 549:3, 550:16, 551:16, 557:7, 557:9, 560:9, 562:23, 565:15, 569:4, 569:6, 569:11, 569:17, 569:20, 569:24, 570:25, 571:3, 571:4, 572:6, 572:14, 581:18, 618:12, 622:4, 635:20, 686:19
Santander's [1] - 587:9
Santiago [2] - 344:5, 444:11
Santiago's [2] - 344:10, 688:6
sat [1] - 300:10
satisfactory [1] - 591:15
satisfied [1] - 459:23
satisfy [1] - 673:24
save [1] - 581:6
saw [24] - 357:21, 358:19, 358:21, 384:13, 421:16, 425:17, 425:20, 425:21, 443:13, 444:6, 444:16, 594:12, 604:12, 613:18, 620:8, 632:17, 658:17, 658:22, 667:2, 667:12, 667:18, 667:25, 668:8, 668:17
SCHLANGER [2] - 297:3
score [8] - 382:15, 384:17, 385:6, 387:13, 387:22, 448:17, 655:11, 655:12
scores [1] - 655:16
screen [2] - 628:15, 628:21
SCUSA [4] - 523:21, 523:23, 526:25, 527:5
second [26] - 305:21, 307:12, 308:5, 308:9, 355:16, 359:2, 425:3, 464:4, 466:7, 466:8, 480:24, 481:6, 503:24, 511:9, 518:12, 521:10, 585:15, 598:22, 607:22, 609:23, 612:5, 632:18, 667:5, 670:15, 670:24, 676:11
Second [1] - 480:25
secretaries [1] - 577:23
Secretaries [1] - 577:24
Secretary [2] - 514:7, 514:16
secretary [11] - 380:17, 436:11, 484:20, 514:8, 514:24, 515:4, 515:7, 579:8, 579:20, 579:24, 594:19
section [6] - 525:2, 525:5, 525:12, 525:20, 528:6, 528:24
Security [3] - 345:20, 346:15, 688:11
See [1] - 495:14
see [136] - 306:12, 320:10, 358:15, 361:7, 362:5, 364:8, 368:11, 368:12, 370:12, 381:8, 382:23, 386:10, 386:13, 386:14, 386:21, 388:21, 400:14, 400:18, 405:12, 407:7, 420:10, 421:18, 423:9, 423:18, 423:20, 424:20, 425:19, 427:15, 427:16, 427:17, 427:19, 429:2, 429:11, 430:9, 434:9, 434:24, 437:3, 438:17, 441:2, 443:11, 443:14, 443:18, 443:19, 446:10, 446:13, 447:2, 448:25, 459:18, 467:25, 470:3, 470:14, 472:13, 475:8, 476:3, 503:7, 503:9, 503:12, 503:15, 503:18, 505:19, 507:18, 514:2, 514:8, 514:18, 515:24, 516:4, 516:11, 516:12, 518:15, 520:17, 521:11, 522:19, 522:24, 523:15, 523:21,

525:3, 525:4, 526:3, 526:7, 527:6, 527:7, 527:10, 528:6, 529:2, 530:16, 530:17, 531:9, 531:10, 536:9, 536:19, 537:19, 539:8, 544:23, 546:18, 546:19, 547:3, 554:20, 554:25, 557:20, 565:8, 566:17, 568:20, 569:22, 571:9, 571:13, 571:15, 573:11, 573:12, 573:15, 585:7, 585:14, 595:8, 598:3, 599:20, 606:11, 607:15, 609:22, 615:16, 621:25, 626:17, 628:10, 632:6, 632:15, 632:19, 634:11, 636:12, 640:20, 641:12, 643:19, 653:9, 653:11, 658:13, 664:24, 676:12, 680:23
seeing [2] - 475:25, 629:22
seek [5] - 526:3, 526:6, 526:11, 526:12, 526:17
seeking [4] - 532:18, 548:19, 609:8, 613:5
seem [1] - 422:19
sees [4] - 336:10, 336:11, 384:23, 638:24
Sell [1] - 488:15
sell [25] - 334:18, 379:12, 396:22, 403:11, 404:12, 413:20, 416:21, 416:22, 416:24, 417:4, 486:4, 489:7, 489:10, 499:7, 598:19, 609:22, 635:10, 659:24, 672:2, 672:5, 672:9, 673:2, 673:9, 673:11, 674:13
seller [17] - 307:7, 308:17, 354:8, 360:5, 361:5, 361:18, 366:21, 369:8, 388:4, 389:21, 417:18, 419:14, 421:11, 560:20, 561:5, 561:6, 561:9
seller's [3] - 388:8, 388:15, 561:12
selling [11] - 329:24, 330:12, 334:9, 334:10, 402:5, 408:6, 672:6, 672:10, 672:15, 672:18, 672:23
sells [1] - 400:3
send [18] - 326:24, 356:12, 374:12, 393:4, 393:6, 468:6, 500:16, 540:17, 540:20, 606:19, 628:9, 628:10, 628:19, 630:25, 638:7, 639:7, 639:8, 640:15
sending [2] - 563:6, 630:14
sends [3] - 541:16, 563:8, 630:10
sense [5] - 449:23, 463:19, 554:9, 661:2, 673:20
sent [37] - 349:25, 350:2, 362:9, 532:3, 533:4, 542:15, 543:3, 546:10, 546:11, 547:15, 548:15, 551:4, 571:10, 594:5, 594:6, 594:12, 595:5, 595:8, 595:12, 595:15, 595:24, 595:25, 597:8, 597:9, 597:10, 597:16, 605:11, 606:20, 628:7, 630:8, 637:3, 638:16, 639:10, 639:12, 639:24, 640:3, 640:14
separate [4] - 393:4, 489:20, 638:17, 638:19
separately [1] - 606:22
series [3] - 299:18, 574:8, 581:8
serious [2] - 481:20, 481:21
serve [2] - 349:5, 441:23
Service [3] - 304:9, 306:6, 685:11
service [24] - 305:19, 305:20, 308:24, 309:24, 310:8, 312:14, 312:18, 329:25, 330:11, 355:16, 397:23, 398:11, 398:12, 399:3, 399:5, 400:4, 400:10, 404:12, 404:13, 405:18, 606:23, 652:10, 686:4, 689:6
SERVICES [2] - 296:17, 297:13
set [7] - 339:20, 587:12, 588:25, 589:2, 592:22, 690:11, 690:20
sets [1] - 504:21
settle [4] - 318:15, 326:24, 380:22, 538:4
settled [3] - 317:17, 317:18, 538:14
settlement [6] - 317:13, 318:11, 323:17, 326:10, 327:2, 380:25
seven [5] - 301:5, 460:20, 463:17, 682:7, 682:19
Seventeen [1] - 385:20
seventeen [2] - 385:21
seventh [1] - 394:9
Seventy [1] - 392:11
Seventy-five [1] - 392:11
Several [1] - 562:25
severe [2] - 613:12, 613:19
Shadia [9] - 313:19, 313:21, 314:7, 314:17, 314:20, 315:2, 315:4, 315:8, 319:15
Shahadat [8] - 329:17, 464:19, 472:18, 474:12, 620:19, 686:10, 686:12, 687:13
SHAHADAT [3] - 295:8, 297:9, 297:14
shake [1] - 300:2
shall [1] - 526:24
shape [1] - 321:4
Shawn [15] - 303:18, 312:25, 313:7, 313:20, 313:21, 314:7, 314:17, 314:21, 315:8, 445:16, 446:10, 446:13, 447:2, 624:8
Shawn's [1] - 307:24
shelf [1] - 571:17
shorten [1] - 591:2
shorter [1] - 402:16
shorthand [1] - 296:20
Shorthand [1] - 690:7
shots [1] - 444:10
show [19] - 305:7, 358:5, 364:21, 417:9, 473:2, 502:18, 502:25, 546:8, 561:23, 583:18, 583:25, 593:10, 620:22, 636:8, 641:6, 641:18, 643:8, 653:18, 653:23
showed [10] - 354:9, 354:14, 357:15, 358:22, 358:23, 552:11, 573:13, 607:24, 608:2, 619:22
showing [7] - 334:10, 357:17, 359:12, 561:25, 562:5, 631:14
shown [5] - 328:17, 398:3, 587:11, 593:18, 606:22
showroom [1] - 622:22
shows [5] - 329:24, 334:9, 425:11, 602:22
shrinking [4] - 615:5, 669:16, 669:21, 669:22
shut [3] - 596:7, 596:14, 596:18
shuttered [1] - 595:21
sic [1] - 595:25
sic] [1] - 593:23
side [4] - 430:11, 511:11, 605:3, 613:21
sided [1] - 331:16
sign [90] - 317:21, 320:8, 324:2, 325:24, 326:21, 327:3, 327:5, 327:6, 327:21, 329:5, 350:6, 356:4, 356:7, 357:9, 357:11, 357:13, 357:18, 360:9, 360:23, 360:24, 360:25, 361:7, 361:8, 361:9, 361:11, 361:17, 361:21, 361:23, 361:25, 374:12, 378:21, 399:19, 399:22, 399:24, 403:6, 404:23, 404:24, 404:25, 405:3, 426:16, 427:21, 445:9, 459:16, 459:19, 459:20, 493:9, 493:13, 493:23, 494:8, 497:8, 502:12, 511:23, 512:8, 512:14, 512:18, 512:20, 512:22, 512:23, 512:25, 517:7, 517:8, 517:21, 540:19, 572:8, 573:8, 576:10, 579:23, 608:4, 608:9, 617:17, 624:15, 631:3, 632:11, 632:16, 634:8, 635:10, 636:16, 636:17, 636:20, 643:2, 643:19, 653:11, 659:21, 667:2, 667:12, 667:25, 668:8, 681:10
signature [77] - 307:20, 307:24, 310:2, 310:3, 317:25, 318:8, 318:9, 359:18, 363:11, 363:13, 363:15, 365:3, 424:20, 503:12, 503:22, 503:23, 509:17, 509:20, 509:24, 510:10, 510:16, 510:19, 511:5, 511:10, 515:25, 516:8, 516:20, 516:21, 516:23, 517:2, 517:9, 517:17, 517:20, 517:25, 518:16, 520:24, 521:3, 531:15, 531:20, 531:24, 552:13, 561:3, 561:8, 561:11, 561:14, 561:17, 563:25, 565:18,

572:9, 573:16, 585:7, 585:17, 585:20, 585:22, 585:23, 586:8, 586:10, 607:12, 608:15, 620:6, 626:17, 626:19, 627:16, 636:14, 636:20, 643:17, 644:23, 653:9, 653:14, 653:20, 657:19, 657:22, 666:17, 666:21, 666:22, 666:23
Signature [2] - 513:25, 516:10
signatures [6] - 516:12, 586:22, 586:24, 623:18, 626:25, 627:3
Signed [2] - 542:22, 684:19
signed [81] - 308:2, 309:10, 317:24, 319:17, 325:4, 325:15, 325:18, 325:20, 325:24, 326:18, 350:4, 350:5, 357:22, 359:23, 360:14, 360:18, 360:19, 360:20, 362:2, 404:6, 404:7, 405:6, 405:11, 405:13, 405:16, 423:17, 424:11, 424:17, 426:15, 493:11, 502:15, 513:6, 515:13, 515:20, 516:13, 516:14, 539:21, 542:20, 547:7, 548:9, 560:25, 561:4, 562:8, 572:6, 585:14, 585:25, 587:3, 595:13, 601:13, 605:8, 607:9, 607:12, 617:10, 617:16, 620:9, 620:11, 620:12, 623:11, 627:6, 627:10, 627:18, 632:20, 633:7, 638:24, 640:17, 642:7, 642:9, 643:25, 644:10, 644:13, 644:18, 649:12, 654:20, 654:25, 655:4, 658:13, 665:13, 666:14, 666:24, 668:12, 689:5
signify [1] - 520:20
signing [15] - 307:18, 338:16, 492:18, 517:20, 517:25, 572:14, 573:6, 573:9, 576:12, 624:25, 644:5, 653:21, 654:15, 654:18, 665:9
Signing [1] - 642:15
signs [2] - 631:13, 644:14
similar [5] - 490:9, 490:10, 624:13, 636:24, 653:4
Similar [1] - 490:11
Simon [27] - 317:16, 318:14, 318:16, 319:8, 319:11, 319:14, 326:11, 326:21, 327:3, 327:6, 327:15, 327:20, 409:2, 409:11, 441:25, 450:17, 567:21, 567:23, 568:3, 568:4, 633:24, 636:14, 654:13, 682:13, 682:22, 687:15
SIMON [220] - 295:17, 297:4, 298:7, 298:9, 298:12, 300:17, 302:13, 302:20, 302:23, 303:2, 304:5, 304:20, 304:25, 305:9, 305:25, 308:6, 321:7, 321:11, 321:16, 322:3, 322:11, 322:18, 323:5, 324:14, 324:17, 324:20, 325:3, 325:10, 325:20, 326:6, 327:18, 345:14, 346:4, 346:14, 346:23, 347:15, 348:3, 358:15, 358:19, 363:10, 365:9, 369:7, 369:11, 370:5, 370:18, 370:23, 371:3, 371:6, 371:15, 371:22, 375:12, 376:4, 377:10, 388:14, 388:23, 394:20, 395:6, 398:3, 398:7, 400:17, 406:7, 406:12, 406:22, 406:25, 407:4, 407:13, 409:5, 409:15, 409:20, 410:4, 410:9, 410:14, 410:25, 421:3, 423:5, 423:13, 423:15, 423:21, 423:25, 425:2, 425:6, 427:6, 428:7, 430:3, 434:12, 434:15, 435:17, 438:8, 438:19, 438:24, 439:7, 439:14, 439:20, 444:21, 451:7, 451:10, 451:20, 452:4, 452:10, 453:20, 454:21, 455:5, 455:12, 455:19, 455:23, 456:2, 456:5, 456:25, 457:9, 458:16, 461:3, 461:7, 462:2, 462:11, 466:19, 466:25, 470:21, 471:21, 477:3, 478:22, 478:25, 479:4, 479:8, 479:12, 479:16, 480:19, 482:10, 482:20, 483:3, 483:10, 483:15, 483:19, 484:5, 486:8, 486:14, 519:4, 519:10, 522:3, 523:13, 535:21, 546:10, 546:17, 547:4, 547:19, 547:24, 548:3, 548:8, 556:23, 582:8, 583:22, 584:7, 584:9, 584:13, 584:15, 587:24, 588:19, 590:2, 590:25, 591:17, 592:19, 595:15, 595:18, 599:12, 599:18, 600:19, 601:21, 602:9, 604:21, 606:5, 606:15, 606:17, 607:2, 607:20, 618:23, 620:14, 637:5, 637:10, 639:20, 639:23, 643:3, 644:3, 646:22, 647:4, 647:6, 647:8, 647:11, 647:15, 647:18, 647:23, 650:17, 650:21, 652:2, 652:12, 653:19, 654:2, 654:7, 666:5, 667:7, 673:4, 673:14, 673:22, 674:3, 675:9, 675:13, 675:17, 676:3, 676:16, 677:4, 677:20, 678:7, 679:9, 679:16, 680:11, 680:14, 680:18, 681:19, 682:3, 682:15, 682:19, 683:6
simple [1] - 610:20
Singh [11] - 304:10, 306:14, 308:16, 308:20, 309:4, 309:5, 316:3, 316:22, 316:23, 685:12, 685:14
single [3] - 351:11, 401:4, 649:19
Sister [2] - 490:22, 519:3
sister [2] - 490:23, 571:25
sit [10] - 334:17, 335:11, 433:24, 459:10, 470:24, 539:8, 554:25, 619:13, 627:25, 679:22
site [1] - 384:5
sits [1] - 415:9
sitting [2] - 682:14, 682:24
situation [4] - 368:15, 540:3, 598:6, 673:13
six [10] - 394:6, 394:17, 395:3, 395:9, 400:21, 430:18, 448:9, 448:14, 669:5
Sixty [2] - 456:19, 456:22
sleep [1] - 614:10
slow [1] - 520:13
small [2] - 463:14, 653:24
SMITH [2] - 298:5, 298:10
smooth [1] - 339:3
Social [3] - 345:20, 346:15, 688:11
software [1] - 628:6
sold [12] - 384:24, 386:9, 401:8, 401:12, 406:3, 406:4, 407:20, 411:9, 415:3, 415:4, 488:14, 580:14
sole [1] - 589:7
solid [1] - 395:19
solve [2] - 566:23, 568:21
Someone [1] - 607:11
someone [25] - 307:17, 382:10, 384:23, 617:16, 630:19, 632:18, 642:22, 645:13, 655:9, 656:14, 656:22, 668:24, 676:23, 676:24, 677:17, 677:18, 678:3, 678:5, 678:14, 678:15, 679:2, 679:24, 679:25, 680:7, 681:3
sometime [3] - 499:13, 501:3, 629:9
Sometime [1] - 342:21
sometimes [15] - 315:18, 318:10, 349:19, 352:24, 356:8, 395:22, 508:12, 513:4, 513:5, 513:10, 619:11, 619:16, 658:4, 658:6, 661:5
Sometimes [5] - 396:21, 469:14, 545:9, 554:24, 648:16
somewhere [2] - 405:7, 596:19
son [16] - 509:21, 510:23, 510:24, 511:2, 511:22, 514:23, 517:20, 517:24, 518:4, 518:14, 520:4, 572:6, 572:13, 585:19, 585:25, 617:24
son's [13] - 503:23, 510:9, 511:10, 511:20, 511:21, 516:6, 517:14, 517:15, 518:13,

518:15, 520:22, 520:23, 585:20
soon [3] - 531:9, 575:13, 682:18
sorry [30] - 304:17, 332:13, 357:3, 359:21, 406:8, 408:23, 412:21, 418:5, 420:4, 423:11, 427:9, 427:11, 451:22, 478:20, 482:5, 497:16, 501:18, 561:22, 563:9, 569:6, 571:13, 582:8, 582:18, 647:19, 653:24, 671:4, 671:7, 671:19, 680:18
Sorry [2] - 607:18, 638:18
sort [1] - 485:16
space [3] - 375:17, 376:10, 450:6
Spanish [5] - 650:7, 650:9, 658:11, 669:7, 669:9
speaking [8] - 426:21, 427:2, 429:3, 430:12, 504:17, 506:4, 668:17, 678:12
speaks [1] - 477:5
special [1] - 486:10
specific [8] - 397:20, 460:10, 475:13, 476:7, 477:16, 515:15, 515:18, 536:21
specifically [5] - 425:21, 475:6, 504:20, 530:14, 530:19
Specifically [1] - 479:14
Specifics [1] - 515:17
speculate [1] - 462:13
spell [1] - 663:11
spent [1] - 592:15
spot [3] - 431:22, 431:23, 431:24
spray [2] - 483:24, 484:3
Spring [1] - 298:6
spring [2] - 465:15, 465:25
squint [1] - 654:4
Ss [2] - 684:5, 690:4
stamp [2] - 335:16, 335:24
stamped [5] - 625:10, 651:17, 651:22, 687:19, 687:22
stand [2] - 608:11, 650:2
standard [3] - 337:7, 337:8, 337:11
standing [3] - 495:4, 587:19, 588:10
stands [2] - 508:23, 584:9
start [14] - 304:7, 306:10, 311:18, 342:19, 354:4, 379:9, 575:5, 577:17, 582:19, 623:7, 628:2, 640:2, 645:9
started [23] - 339:15, 341:20, 341:24, 354:4, 432:5, 434:2, 434:8, 434:23, 435:5, 435:8, 437:25, 448:4, 464:22, 469:22, 470:12, 586:16, 586:18, 612:21, 616:15, 618:9, 625:7, 629:22, 664:4
starting [5] - 338:25, 428:18, 433:21, 433:22, 475:17
STATE [2] - 684:4, 690:4
State [12] - 296:21, 299:4, 453:5, 453:8, 455:13, 458:3, 495:4, 495:5, 640:25, 684:23, 687:17, 690:8
state [10] - 346:5, 384:19, 451:4, 452:2, 458:3, 458:7, 458:15, 522:23, 620:9, 632:18
statement [9] - 320:13, 320:15, 320:16, 320:24, 322:24, 323:8, 411:12, 616:8, 649:21
statements [6] - 371:13, 371:14, 574:23, 612:14, 613:2, 654:20
STATES [1] - 295:2
stating [1] - 588:4
Station [1] - 488:20
stay [2] - 351:13, 352:2
Stay [1] - 351:20
steal [3] - 418:22, 423:2, 612:10
stealing [2] - 420:24, 421:2
step [1] - 623:5
steps [6] - 428:23, 438:7, 438:16, 659:5, 659:12, 660:23
still [14] - 313:9, 431:17, 438:23, 447:5, 461:21, 489:8, 501:8, 501:11, 533:25, 579:3, 596:23, 597:14, 615:21, 670:4
stipulate [2] - 325:17, 590:25
stole [2] - 679:2, 679:24
Stole [1] - 679:3
stolen [1] - 420:24
stood [1] - 649:19
stop [8] - 311:13, 321:5, 457:13, 552:18, 569:24, 628:17, 645:8, 660:3
Stop [1] - 321:14
stopped [3] - 571:4, 661:19, 663:23
stopping [1] - 661:13
stops [2] - 659:10, 662:11
storage [2] - 345:2, 345:3
straight [4] - 313:17, 459:11, 463:24, 463:25
straighten [2] - 655:15, 655:16
straightforward [1] - 680:22
Street [2] - 297:10, 493:20
street [7] - 353:12, 456:14, 456:16, 463:17, 481:11, 482:8
stressing [1] - 428:15
strike [1] - 372:6
Strike [2] - 323:2, 399:10
struck [1] - 624:2
structure [4] - 459:13, 460:9, 540:18, 631:14
stuff [3] - 337:10, 443:23, 487:17
stupid [5] - 380:2, 417:2, 417:3, 481:22, 483:16
stupidity [1] - 483:19
subject [4] - 386:20, 389:7, 389:13, 518:9
Subject [1] - 386:25
submission [1] - 533:11
submit [4] - 331:17, 473:20, 540:16, 541:11
submitted [6] - 472:16, 480:14, 531:19, 532:17, 534:9, 536:7
subparagraph [1] - 588:4
Subprime [1] - 656:10
subprime [13] - 356:17, 362:7, 366:24, 368:16, 635:23, 635:25, 636:2, 637:16, 655:11, 655:12, 655:20, 656:6, 656:12
Subscribed [1] - 684:19
substance [1] - 504:7
sue [4] - 379:18, 536:18, 536:22, 536:24
sued [3] - 301:2, 301:3, 675:6
suffered [1] - 613:12
sufficient [1] - 499:3
suggest [1] - 314:17
suicide [1] - 463:16
Suite [2] - 296:24, 297:21
summer [2] - 421:17, 448:5
Supervise [1] - 495:15
supervise [1] - 485:12
supervised [1] - 485:11
supplied [1] - 524:8
suppose [1] - 402:15
Supposed [2] - 309:18, 516:24
supposed [12] - 310:14, 367:20, 373:24, 447:19, 447:21, 516:19, 516:22, 516:25, 517:16, 588:12, 632:5, 632:6
supposedly [1] - 532:21
surprise [2] - 557:20, 565:3
surprised [2] - 424:16, 563:24
suspected [1] - 478:12
suspicious [1] - 478:12
sworn [3] - 299:3, 595:6, 690:12
system [11] - 441:13, 441:15, 441:19, 441:23, 449:16, 628:5, 629:2, 631:18, 638:21, 689:12

T

table [1] - 608:3
talks [2] - 525:12, 541:3
tape [2] - 645:9, 665:15
tapes [1] - 645:4
tax [4] - 453:21, 453:23
taxes [12] - 450:25, 451:5, 451:13, 451:19, 452:2, 452:14, 452:21, 452:22, 453:15, 458:2, 458:5, 536:5
taxi [4] - 433:8, 433:16, 612:10, 619:16
TD [11] - 364:14, 365:21, 366:2, 366:7, 372:10, 373:4, 373:19, 374:4, 576:23, 576:25, 628:10
tech [1] - 441:10
technician [1] - 645:10
Technology [1] - 405:25
telemarketing [1] - 383:22
Telemarketing [1] - 383:23
temper [5] - 482:13, 482:23, 483:5, 483:11, 621:7
ten [5] - 498:3, 498:4,

575:21, 614:21
tenant [2] - 449:20, 449:22
term [6] - 400:18, 400:20, 400:24, 619:2, 634:8, 670:8
Term [1] - 400:19
terminate [1] - 341:5
terminology [1] - 581:18
terms [11] - 402:16, 461:4, 470:20, 541:8, 541:19, 592:16, 599:4, 632:4, 632:19, 654:24, 655:5
test [2] - 351:25, 352:2
Testament [1] - 437:2
testified [38] - 299:7, 300:5, 300:7, 300:18, 328:22, 352:8, 357:21, 368:14, 369:2, 433:18, 438:25, 449:12, 464:21, 465:7, 466:10, 466:11, 467:9, 469:18, 470:6, 476:4, 486:3, 496:2, 534:3, 572:5, 581:13, 581:16, 595:19, 601:5, 609:16, 618:17, 620:2, 637:12, 666:16, 667:17, 668:7, 669:22, 673:18, 689:18
testify [8] - 300:20, 480:22, 550:12, 634:20, 666:25, 667:11, 667:15, 667:24
testifying [5] - 301:7, 301:14, 400:15, 470:9, 560:5
testimony [22] - 324:21, 347:3, 387:24, 428:9, 437:5, 439:13, 439:15, 457:14, 465:22, 492:17, 492:21, 492:22, 520:8, 521:17, 525:7, 587:2, 595:7, 635:19, 668:5, 684:9, 684:12, 690:14
Testimony [1] - 437:2
THE [35] - 302:2, 316:10, 344:13, 344:22, 351:5, 407:9, 407:12, 410:24, 423:23, 424:3, 424:8, 424:13, 434:21, 450:13, 450:19, 456:13, 464:10, 464:12, 468:15, 519:6, 549:11, 582:13, 602:12, 604:23, 606:25, 637:9, 637:11, 647:3, 647:5, 647:7, 647:10, 647:14, 647:17, 675:11, 680:13
theft [5] - 354:25, 407:17, 652:9, 680:3, 680:6
therein [2] - 588:2, 588:5
thinking [1] - 463:20
thinks [1] - 428:4
third [3] - 306:4, 306:17, 518:17
Third [1] - 298:16
Thirty [5] - 400:21, 572:18, 572:19, 572:20, 572:21
Thirty-six [1] - 400:21
Thirty-two [4] - 572:18, 572:19, 572:20, 572:21
thousand [3] - 404:20, 416:17, 615:2
thousands [2] - 616:5, 616:10
threat [1] - 322:13
threaten [5] - 610:13, 610:15, 621:8, 660:16, 662:4
threatening [1] - 620:24
threats [2] - 612:13, 612:25
three [10] - 304:15, 418:4, 444:9, 574:5, 593:10, 593:18, 616:2, 639:16, 645:8, 647:16
Threepence [1] - 299:5
ticket [1] - 457:15
ticketed [1] - 457:16
tied [1] - 352:25
tight [2] - 590:8
title [20] - 315:17, 320:6, 413:15, 413:16, 474:6, 484:14, 484:17, 484:19, 492:3, 492:4, 492:7, 492:11, 493:6, 506:22, 508:13, 508:15, 579:5, 598:13, 610:2, 642:19
Today [2] - 462:25, 658:25
today [12] - 301:19, 461:18, 461:22, 462:23, 463:3, 466:11, 471:7, 488:5, 489:11, 560:5, 578:17, 594:3
together [5] - 442:18, 442:24, 443:12, 443:16, 541:8
took [7] - 375:24, 431:20, 441:10, 535:23, 661:18, 662:12, 688:23
top [9] - 379:2, 503:15, 509:18, 545:21, 565:24, 604:12, 652:24, 686:20
top-line [1] - 604:12
Torres [1] - 356:23
total [3] - 310:20, 412:14, 603:3
Total [1] - 305:21
totalled [1] - 601:2
touched [1] - 354:2
touring [1] - 378:25
TRADERS [1] - 297:19
trail [1] - 356:9
trailer [1] - 441:7
train [5] - 339:5, 339:8, 339:11, 339:14, 339:16
trained [1] - 339:9
transaction [53] - 328:18, 336:17, 339:7, 341:6, 354:16, 354:21, 362:23, 363:4, 363:7, 366:10, 368:20, 370:7, 370:20, 378:13, 381:2, 385:15, 385:19, 390:18, 398:13, 400:5, 400:7, 410:19, 415:24, 452:5, 479:18, 531:21, 532:14, 532:19, 532:25, 534:4, 534:15, 537:11, 538:9, 538:13, 538:17, 538:23, 540:6, 540:9, 540:10, 543:18, 552:8, 557:6, 560:7, 568:5, 571:6, 590:20, 616:20, 634:17, 638:23, 650:3, 686:10, 686:14, 686:16
transactions [6] - 354:18, 368:11, 406:6, 443:4, 443:10, 537:23
transcript [10] - 343:12, 343:13, 344:10, 349:4, 350:19, 441:21, 450:6, 684:9, 684:11, 690:13
transfer [4] - 367:15, 367:22, 368:23, 370:16
transferred [2] - 355:25, 370:13
transport [1] - 413:17
transportation [2] - 412:16, 415:14
treasurer [1] - 579:18
trial [4] - 324:14, 324:23, 437:6, 437:7
trick [1] - 307:3
tried [14] - 321:21, 338:8, 338:9, 341:5, 395:18, 436:6, 565:19, 571:11, 607:7, 609:5, 609:17, 612:10, 656:18, 675:23
true [19] - 425:13, 452:12, 453:13, 460:13, 460:18, 524:9, 530:13, 590:19, 601:10, 604:15, 616:8, 621:25, 632:6, 663:2, 665:22, 684:11, 684:14, 690:13
trust [2] - 326:20, 463:12
TRUST [1] - 297:19
truthfully [1] - 301:12
try [25] - 313:23, 324:12, 337:20, 341:4, 344:17, 346:9, 347:21, 395:23, 417:6, 418:15, 440:11, 481:17, 487:13, 551:15, 566:20, 566:25, 574:19, 575:13, 581:6, 603:20, 603:25, 604:8, 607:6, 611:5, 648:4
trying [16] - 302:9, 302:15, 302:21, 321:21, 324:21, 324:22, 324:25, 338:5, 530:7, 601:12, 608:17, 640:4, 647:22, 673:25, 674:19, 679:14
TUHIN [3] - 295:8, 297:9, 297:14
Tuhin [72] - 329:17, 471:19, 473:3, 474:4, 474:12, 474:25, 475:6, 574:7, 589:25, 590:4, 598:18, 599:6, 600:20, 601:12, 603:18, 603:25, 604:8, 604:24, 605:5, 606:10, 607:4, 608:14, 608:21, 609:5, 609:17, 611:23, 613:11, 613:18, 620:8, 620:19, 626:22, 627:6, 627:10, 627:19, 629:15, 631:16, 632:17, 633:16, 635:5, 636:25, 640:10, 642:9, 643:2, 643:5, 647:6, 651:4, 652:6, 653:19, 653:21, 665:9, 666:14, 666:20, 667:12, 667:18, 667:25, 668:11, 669:9, 669:13, 670:10, 670:11, 672:13, 672:21, 673:8, 674:12, 675:7, 675:19, 675:20, 675:21, 676:7, 686:10, 686:12, 687:13
Tuhin's [13] - 328:18, 329:8, 411:17, 411:19, 415:24, 464:19, 472:18,

476:2, 597:7, 611:24, 629:25, 642:23, 644:17
turn [1] - 531:23
Turn [1] - 518:19
turned [1] - 420:6
turning [1] - 657:12
Turnpike [2] - 488:19, 495:2
turns [2] - 525:15, 532:24
twice [1] - 615:14
two [59] - 310:21, 312:3, 332:2, 332:14, 333:10, 355:21, 366:6, 372:8, 378:4, 391:9, 391:11, 393:10, 394:24, 423:17, 424:5, 424:9, 424:10, 444:9, 469:15, 469:16, 471:25, 480:17, 489:17, 489:19, 499:13, 499:14, 516:12, 519:5, 519:7, 519:16, 529:23, 547:5, 547:8, 549:15, 552:12, 572:3, 572:18, 572:19, 572:20, 572:21, 575:9, 579:24, 583:3, 583:18, 591:20, 617:25, 623:21, 624:7, 626:25, 635:3, 637:20, 638:8, 638:9, 645:7, 646:5, 648:19, 665:17
Two [1] - 489:20
two-minute [2] - 378:4, 623:21
two-page [3] - 547:5, 547:8
type [4] - 402:18, 591:5, 635:21, 656:12

U

Ultima [1] - 468:19
unanimously [1] - 514:18
uncollectability [1] - 524:17
under [30] - 299:8, 301:7, 371:7, 371:23, 407:4, 412:20, 412:22, 413:12, 422:2, 422:8, 443:22, 454:21, 459:15, 466:11, 505:12, 520:5, 525:4, 527:9, 529:14, 535:15, 591:4, 599:7, 615:24, 631:4, 632:4, 637:23, 659:13, 660:23, 662:11, 684:10
underlying [1] - 541:12
Underneath [2] - 509:22, 511:13
underneath [1] - 510:12
understood [7] - 438:10, 438:11, 470:10, 470:18, 494:7, 574:13, 670:7
undertake [2] - 599:7, 651:3
undertaken [2] - 616:4, 618:10
union [2] - 656:18, 656:19
UNITED [1] - 295:2
unless [1] - 384:16
unquote [1] - 368:16
untrue [4] - 323:3, 323:15, 525:15, 525:22
Up [1] - 633:13
up [49] - 302:7, 305:25, 343:6, 353:11, 375:20, 376:15, 377:10, 391:25, 409:18, 450:16, 469:15, 469:17, 503:15, 517:4, 522:4, 522:5, 544:20, 549:14, 550:3, 551:10, 573:18, 573:19, 577:6, 577:13, 577:21, 578:6, 578:10, 578:13, 607:25, 608:2, 619:9, 622:2, 625:8, 628:3, 629:21, 630:20, 632:19, 633:6, 635:21, 654:25, 655:5, 657:16, 672:15, 680:8, 681:7, 682:3, 682:6, 682:13, 682:24
upper [1] - 510:2
upset [1] - 614:7
upside [1] - 593:24
uptight [1] - 322:18
urination [4] - 456:18, 456:21, 457:8
USA [3] - 298:15, 354:13, 523:24

V

valid [2] - 523:14, 524:4
Valley [1] - 298:6
Vehicle [14] - 304:8, 305:20, 397:23, 408:14, 536:5, 536:16, 536:17, 536:19, 536:24, 571:10, 642:4, 685:11, 686:4, 686:6
vehicle [19] - 305:18, 308:24, 309:23, 310:8, 312:14, 337:6, 381:9, 408:7, 416:10, 471:21, 471:23, 472:2, 524:12, 535:13, 591:15, 609:7, 639:19, 660:16, 662:5
Vehicles [2] - 641:2, 687:17
vehicles [1] - 305:22
Vendor [1] - 412:8
vendor [10] - 399:6, 400:2, 405:22, 406:2, 407:11, 412:6, 412:7, 520:17, 689:9
vendors [3] - 399:23, 406:19, 557:11
verbal [1] - 574:23
verbalize [1] - 574:25
verification [1] - 551:15
verify [2] - 544:7, 551:15
versus [1] - 299:21
viable [1] - 483:18
vice [3] - 579:7, 579:18, 595:13
video [2] - 449:15, 665:9
VIDEOTAPED [2] - 295:23, 296:13
Videotaped [1] - 685:4
view [2] - 472:18, 519:12
violated [1] - 506:15
violates [1] - 525:8
Violation [3] - 454:13, 454:15, 454:17
violation [3] - 346:20, 454:14, 454:16
violations [5] - 454:19, 456:9, 456:11, 457:4, 588:22
vis [2] - 646:24
vis-a-vis [1] - 646:24
visit [2] - 347:14, 441:4
Voice [1] - 611:14
voice [2] - 305:25, 377:10
void [4] - 390:2, 468:5, 468:24, 671:11
voluntarily [1] - 636:21
vomiting [1] - 614:14
VSI [2] - 605:16, 606:4

W

W-2 [6] - 348:9, 351:18, 351:22, 352:9, 352:18, 352:21
W-2s [4] - 347:8, 347:9, 350:8, 351:9
wait [5] - 321:19, 466:7, 632:18, 667:21, 675:5
Wait [1] - 322:5
waiting [5] - 445:8, 554:25, 555:2, 555:3, 555:4
wake [2] - 469:15, 469:17
walk [3] - 419:6, 622:21, 681:15
walked [2] - 361:10, 657:6
walks [1] - 622:5
wants [6] - 316:18, 333:2, 334:15, 377:6, 656:14
warrant [1] - 526:17
Warranties [1] - 521:12
warranties [2] - 406:14, 528:24
warrants [3] - 522:2, 522:9, 588:2
warranty [13] - 356:11, 404:17, 404:19, 404:20, 443:22, 525:14, 536:3, 588:5, 589:9, 615:9, 652:10, 671:8, 671:10
wasting [1] - 587:6
watch [1] - 665:8
watching [3] - 433:22, 435:8, 665:14
water [2] - 483:24, 484:3
watering [1] - 484:4
website [10] - 382:5, 382:19, 382:20, 382:23, 383:4, 383:19, 411:20, 642:2, 642:3, 642:6
websites [1] - 656:20
week [10] - 351:20, 352:5, 376:23, 468:4, 469:15, 476:12, 619:14, 619:20, 645:8
weeks [1] - 469:15
Weinstein [1] - 606:9
weird [1] - 409:19
whatsoever [1] - 406:24
WHEREOF [1] - 690:19
white [1] - 616:22
whole [5] - 379:24, 506:23, 525:3, 599:9, 627:17
wide [1] - 627:17
wife [1] - 377:23
wild [2] - 428:19, 448:4
willing [3] - 371:9, 404:2
winter [1] - 564:13
Wisdom [1] - 328:8
wish [4] - 530:16, 565:7, 567:4, 568:20
withdrawn [1] - 410:12
witness [10] - 327:16, 361:11, 398:4, 464:9, 479:7, 573:21, 644:4, 654:15, 690:10, 690:14
WITNESS [36] - 302:2, 316:10, 344:13, 344:22, 351:5, 407:9, 407:12, 410:24, 423:23,

424:3, 424:8, 424:13, 450:13, 450:19, 456:13, 464:10, 464:12, 468:15, 519:6, 549:11, 582:13, 602:12, 604:23, 606:25, 637:9, 637:11, 647:3, 647:5, 647:7, 647:10, 647:14, 647:17, 675:11, 680:13, 685:2, 690:19
witnessed [1] - 653:21
woman [3] - 312:2, 529:23, 610:8
Woman [1] - 610:9
women [2] - 552:22, 553:7
wonderful [1] - 343:9
wondering [3] - 306:24, 347:2, 451:23
Woodside [2] - 596:3, 597:11
Woolworth [1] - 297:20
word [5] - 299:17, 410:21, 564:24, 567:5, 677:14
words [7] - 313:24, 386:22, 526:15, 527:20, 528:6, 529:7, 538:19
worker [1] - 513:6
works [6] - 555:17, 618:15, 676:25, 677:18, 678:5, 681:4
world [1] - 627:17
worry [6] - 426:19, 431:10, 571:16, 571:17
write [28] - 311:3, 311:7, 312:23, 318:12, 349:23, 388:22, 448:24, 450:13, 511:3, 511:4, 511:16, 511:23, 513:13, 558:15, 598:16, 642:25, 657:23, 658:4, 658:6, 658:8, 661:5, 661:9, 661:13, 661:19, 661:24, 661:25, 663:13
writes [1] - 624:15
writing [17] - 337:8, 345:13, 345:24, 346:21, 347:11, 347:21, 375:21, 376:15, 494:3, 600:13, 612:3, 662:22, 662:24, 662:25, 663:4, 663:5
Writing [1] - 612:9
written [16] - 339:20, 339:24, 389:23, 402:24, 402:25, 403:2, 404:6, 404:10, 404:14, 404:25, 441:24, 511:14, 559:4, 582:2, 582:21, 582:25
wrongdoing [2] - 540:4, 651:3
wrote [7] - 348:10, 473:19, 510:22, 510:24, 516:17, 516:18, 611:14

Y

Y-O-U-S-S-E-F [1] - 348:21
year [6] - 445:25, 457:22, 476:12, 497:20, 497:22, 499:13
years [12] - 301:5, 314:11, 456:24, 498:3, 498:4, 499:14, 572:18, 572:20, 575:21, 577:13, 660:21
Yesterday [3] - 328:16, 417:10, 449:12
yesterday [37] - 299:14, 300:5, 300:7, 300:14, 302:8, 303:17, 304:4, 313:17, 313:18, 322:9, 327:24, 329:18, 330:16, 334:22, 336:25, 343:21, 351:24, 352:8, 354:3, 354:4, 355:5, 355:12, 357:15, 358:20, 358:21, 359:19, 360:8, 415:20, 419:11, 421:7, 433:18, 448:11, 459:4, 480:20, 480:22, 537:18, 637:12
YORK [13] - 295:2, 295:6, 295:10, 295:15, 295:20, 296:5, 296:9, 296:14, 298:4, 298:9, 684:4, 690:4, 690:5
York [227] - 296:18, 296:21, 296:24, 297:5, 297:10, 297:15, 297:21, 298:6, 298:11, 298:16, 299:4, 299:6, 299:21, 314:13, 314:15, 329:20, 330:21, 331:15, 331:21, 332:6, 333:18, 339:15, 341:21, 341:25, 342:4, 345:11, 346:2, 346:5, 348:2, 348:4, 348:8, 349:11, 349:15, 349:17, 349:21, 350:22, 352:15, 353:5, 354:6, 355:14, 355:20, 355:25, 356:3, 356:13, 356:24, 357:2, 357:4, 357:5, 357:24, 358:24, 362:6, 364:2, 364:11, 365:4, 365:12, 367:9, 367:13, 367:14, 368:5, 368:14, 368:19, 368:22, 369:4, 369:8, 369:15, 369:20, 371:5, 372:4, 372:8, 373:4, 373:13, 373:21, 374:24, 375:4, 375:6, 376:2, 376:11, 377:4, 383:15, 387:2, 387:11, 389:9, 389:17, 390:16, 393:23, 394:12, 395:10, 399:8, 399:11, 400:3, 400:9, 403:2, 403:19, 404:15, 405:17, 405:21, 406:5, 406:9, 406:20, 407:19, 407:20, 408:3, 412:19, 414:20, 415:15, 416:9, 416:23, 417:3, 418:16, 418:21, 424:11, 424:17, 424:18, 426:15, 426:17, 432:10, 441:5, 441:8, 441:11, 442:14, 444:4, 447:9, 447:16, 449:6, 449:17, 450:9, 452:3, 452:12, 452:16, 453:8, 455:12, 458:3, 461:5, 471:6, 472:5, 473:12, 473:18, 477:25, 480:5, 480:16, 481:5, 488:20, 495:2, 495:4, 495:5, 499:15, 505:2, 509:5, 509:6, 532:12, 546:11, 548:10, 550:14, 551:24, 552:19, 552:22, 553:8, 553:12, 554:11, 554:14, 554:17, 555:8, 558:16, 558:19, 559:5, 560:22, 561:10, 570:11, 578:5, 578:25, 580:4, 580:18, 581:22, 581:24, 582:9, 582:13, 582:19, 586:12, 586:17, 586:19, 587:13, 588:23, 589:15, 589:23, 592:3, 594:8, 596:2, 596:3, 596:21, 596:25, 597:9, 597:11, 597:14, 598:19, 611:14, 622:17, 628:18, 629:6, 630:3, 637:23, 640:25, 663:2, 663:3, 663:8, 663:21, 663:24, 664:11, 684:23, 685:15, 686:9, 687:8, 687:17, 688:5, 688:12, 688:16, 688:19, 689:4, 689:6, 689:9, 689:12, 689:14, 690:9
yourself [3] - 299:22, 373:12, 506:2
Youssef [9] - 348:15, 348:16, 349:10, 351:3, 351:8, 458:11, 458:12, 688:14, 688:17
Youssef's [2] - 348:22, 349:4
YU [1] - 348:20

Z

zero [1] - 634:13
Zero [2] - 560:8, 634:14
Zheng [2] - 686:14, 686:16
ZHENGHUI [2] - 296:2, 297:4
Zhenghui [16] - 550:2, 550:7, 550:13, 550:19, 551:3, 551:12, 552:2, 552:7, 552:11, 557:6, 560:6, 563:21, 565:11, 566:20, 568:23, 570:22